Legislative Business.

THE TRAVANCORE AGRICULTURISTS' RELIEF BILL (contd).

Clause 7,—(*contd.*)

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Sir, when I moved this amendment on Saturday last, I said that it was necessary to place some restriction upon the eligibility of an applicant to come in for relief under this part of the Bill. For the purpose of Part II, I said that applicants might be divided into three categories, namely, (1) those whose assets are far in excess of their liabilities, (2) those whose assets are more or less equal to their liabilities, and (3) those whose liabilities are in excess of their assets. There is no difficulty whatsoever in regard to the 2nd and 3rd categories. They are evidently entitled to relief. The difficulty comes in only with regard to those persons whose assets are in excess of their liabilities. It is in the case of these people that a line has to be drawn to arrive at a formula. In order that the formula may not work any hardship upon the 2nd and 3rd categories of persons, I suggest that a proportion might be fixed between the liabilities and assets of the applicant in order to make him eligible for relief under this part of the Bill. The merit of this proposal is that it will not place any restriction upon the quantum of the liability or upon the quantum of the assets of the person, but it will only relate to the percentage of the liabilities of an applicant to his assets. If such a formula is accepted, I have got my own suggestion with regard to the proportion. I would suggest that the proportion be fixed at 50 per cent. of the assets so that, if the liabilities of a person are below 50 per cent of his assets, then he will not evidently come in for relief.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Does the member say that he will be ineligible for relief?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): He will not be eligible. All those whose liabilities are above that proportion will be eligible. If a person has liabilities only below 50 per cent. then it is only fair to suggest that such a person should not be entitled to relief and the Legislature should not give any sanction to a proposal designed to give relief to such persons.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): According to the member, should there not be a preliminary enquiry to ascertain the assets and liabilities and to find out that the proportion fixed is satisfied?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): I have anticipated the difficulty, and I have provided for that in my amendment that is to say, as the application has to be put in by the debtor, he has to make a statement of his assets and liabilities and under the foregoing clause there is therefore no need to make a preliminary enquiry.

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MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Is the proportion to be fixed on the basis of the materials supplied by the debtor alone?

MR. S. CHATTANATHA KARAYALAR (*Shencottah*): The proportion has to be fixed by rules to be framed; but the actual proportion has to be determined in each case by the Board.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): May I know whether that will be a safe criterion?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): It will be easy for the Board to come to a decision. My point is that there should be a *prima facie* case made out by the applicant himself for relief.

If his assets are far in excess of his liabilities, why should he come in for relief at all? My point is that, if the assets are more than twice his liabilities, he should not be entitled to relief.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): May I ask whether the member wants a statement from the debtor that his assets exceed 50 per cent. of his liabilities?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): No such statement is necessary. The Board will be able to come to a decision on the point. If the Board finds, on the materials furnished in the application, that his liabilities are less than 50 per cent. of his assets then the Board will summarily reject the application.

According to my amendment, such a debtor will not come in for relief at all. Another merit of this proposal is that, if all agricultural debtors apply for relief, then the working of the Board will be hampered by applications of people who do not deserve any relief. I can see that this jurisdiction of exclusion can be exercised by the Board itself under Section 8. My point is, if a *prima facie* case for relief is not made out by the materials furnished by the applicant, the Board should have jurisdiction to reject the application. If such a restriction is not placed, the Board will be burdened with applications from persons who do not really deserve any relief; and the Board itself will have no option except to follow the procedure laid down in the clause.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is it not the Board that has to determine the proportion?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): That is not what the amendment says. The proportion has to be fixed by rules to be framed. In my amendment, I have not specifically stated what the proportion should be. I have not fixed the proportion because, even if the House agrees to the principle of the amendment, the proportion fixed by me may not be accepted by the House and the amendment may be lost on the proportion. So, I have provided for the proportion being fixed by rules framed under the Regulation and I have made a definite suggestion as to proportion.

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*): I second it.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, in theory Mr. Karayalar's position, *viz.* that a person, whose assets are far above his liabilities, should not take advantage of the conciliation provision in this Bill, may be correct. In actual practice, however, that theory could have no value at all. It is rather difficult for a man to say at the very outset how far his assets exceed the liabilities. Even if that matter is enquired into by the Board, that fact has to be established only on the evidence produced to the Board. That means an elaborate enquiry. The mere statement to that effect either by the debtor or the creditors cannot obviously conclude the matter. If the amendment of Mr. Karayalar is accepted, then it means the debtor who comes before the Board seeking conciliation has to say that he comes within the rule.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Is there not a possibility of a debtor bloating his debts?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That is not likely; he can only under-value his assets. That is to say, he will value his assets at a smaller figure. He will manipulate the figures in such a way that he would get the benefit of the rule that would enable conciliation.

In actual practice, it is rather difficult to determine how far the assets exceed his liabilities. At the very close of the enquiry, it may be possible to say how the liabilities stand in proportion to the assets. The fear that is apprehended by Mr. Karayalar may not actually arise, if the conciliation proposals are understood in the proper light. If a debtor's assets far exceed his liabilities, such a debtor does not require any relief at all. But, why should Mr. Karayalar think that such a debtor will necessarily be allowed a reduction of his debt by the Board? The Board will value his assets and liabilities; and only if the Board is satisfied that the debtor's case really deserves conciliation will the Board conciliate.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Is it not possible for a debtor to take advantage of the Conciliation Board?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If Mr. Karayalar says that every debtor has the privilege or benefit of making an application, then it cannot be helped; but the actual conciliation will come in only in a deserving case.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Will he not take the chance of getting a reduction through the medium of the Board?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No. Not likely. The Board will see to it.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Is not the debtor required to value all his assets properly?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes. If Mr. Karayalar's proposal had been that, if *on the statement* made by the debtor, his assets exceed the liabilities, then he shall not be entitled to conciliation, I can understand it.

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MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Sir, that is my object and I shall amend it accordingly.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): But the amendment tabled does not give that idea.

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum—Urban*): May I know from the Law Member whether a person who makes a false statement is not liable to be punished under the Penal Code?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The mere statement is not enough; it must be proved to have been false to his knowledge.

If it is known to the board that a person's assets far exceed his liabilities, then it has got power to summararily reject the application. It will be seen from Clause 8 that, only if it is in the opinion of the Board desirable to effect conciliation, the Board will proceed further in the matter.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): The Board is simply concerned with the materials furnished in the application for conciliation. The Board is bound to follow the procedure under Section 10 and then invoke the provisions of Section 8. Is that not the position?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If Mr. Karayalar's point is to minimise that procedure, I can very well understand his point.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Is there not an opportunity for some persons to come forward with frivolous applications and thus hamper the procedure of the Board?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The Board has discretion to reject such applications summarily. The fear apprehended by Mr. Karayalar, *viz.*, that, even if a debtor's assets far exceed his liabilities, he may be given a reduction in principal and interest by the Board, is not well-founded.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): With the permission of the Chair, I wish to offer a word of explanation. My object is only this. The mere application of a debtor, whose assets really exceed his liabilities, that his debts should be conciliated, should not be given consideration by the Board. I am prepared to make a slight verbal alteration *in the amendment* to satisfy the Law Member, if the Chair would allow me.

PRESIDENT: It is too late in the day now to go on admitting amendments and considering them and thus hamper the progress made so far.

The motion before the House is that, in Clause 7 for sub-clause (1) substitute the following:—

"On receipt of an application under Section 4, the Board shall determine the proportion of the liabilities of the debtor to his assets and shall reject the application if it is below the prescribed proportion".

The amendment was put to vote and lost.

PRESIDENT: The question is that Clause 7 do form part of the Bill.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose it. The main idea of the Bill is to give relief to the indebted agriculturist.

MR. P. C. KURIYAN (*Kottayan I*): May I know whether the member is in order in making a long speech at this stage? There is no provision in the Rules or Standing Orders for a member to make a long speech at this stage.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I explain, Sir. I am entitled to speak if my speech deals with the particular clause under discussion.

PRESIDENT: The point now is, after all the amendments to Clause 7 have been dealt with by the House and its verdict also given, it is competent for any member to reverse the whole proceedings and see that Clause 7 do not form part of the Bill. If the honourable member has got any objection of any particular clause, then an opportunity will be certainly given to him at the third reading when the Bill is put before the House.

The question is that Clause 7 do form part of the Bill.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose it.

PRESIDENT: The Chair has taken note of it.

The question that Clause 7 do form part of the Bill was then put to vote and carried.

Clause 8.

MR. R. SIVARAMAN NAIR (*Tiruvella II*): Much of what is contained in the present amendment is contained in an amendment which was moved yesterday. If the Chair would permit me to exclude those portions, then I shall move my amendment.

PRESIDENT: I cannot allow the member to make any amendment to what is contained in the agenda.

MR. R. SIVARAMAN NAIR (*Tiruvella II*): Then I do not move the amendment.

The question whether Clause 8 do form part of the Bill was then put.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose it.

The motion was carried and the Clause was added to the Bill.

Clause 9.

The question that Clause 9 do form part of the Bill was then put.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose it.

The motion was carried and the Clause was added to the Bill.

Clause 10.

MR. K. PADMANABHAN (*Chirayinkil I*): Sir, I beg to move that:—

In Clause 10, sub-clause (2), line 2, insert the words "or any other material points of difference between the debtor and the creditors inter se" between the words "debtor" and "the Board" and substitute the word "shall" for "may" in line 2.

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Clause 10 prescribes the procedure to be followed by the Board when there is a difference between the debtor and creditor in regard to the existence of the quantum of debt. The object of my amendment is to enable the Board to enter into other matters of difference between them in the course of enquiry. The present provision restricts it to only one thing, *viz.*, disputes between the parties with regard to the existence of the debt and, if it exists what its quantum is. My amendment widens the scope and gives further powers to the Board. It is quite natural that, in the course of enquiry, other matters may crop up to be decided by the Board. The Board must have power to go into those questions and arrive at a decision in the matter. For that the Board must have power to go into those questions and decide them.

Then I want to alter the word "may" into shall. I have made it obligatory for the Board to decide the matter. The present provision says ".....the Board *may* decide.....". It is only an option given to the Board. As the provision now stands, it may decide or may not decide. It is not proper to give such an option to the Board. Therefore, I suggest that this amendment may be accepted by the House.

MR. K. R. ELENKATH (*Kalkulam I*) I second the amendment.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod I*); I have one difficulty in understanding the amendment.

PRESIDENT: I am sure the Law Member will clear that difficulty.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): In regard to the change of the word "may" into "shall" I must say that for all practical purposes the word *may* means "*shall*".

MR. K. PADMANABHAN (*Chirayinkil I*): May I know whether it is obligatory for the Board to decide the point?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, it is obligatory. The Board is given power to decide the matter. The question is whether the Board has or has not the power to decide the matter. Because it is said that the Board, "may decide", it does not mean that the Board has not the power to decide the quantum of the debt. Therefore the word "*may*" is quite sufficient. When a power is conferred upon a public authority, it is expressed by the word "may".

MR. K. R. ELANKATH (*Kalkulam I*): If the word "may" means an obligation on the part of the Board, what is the objection of the Law Member to change it into "shall"?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*); Because firstly that has been passed by a large Select Committee consisting of about 23 members. I myself am personally opposed to the change.

In regard to the "or any other material points" referred to by the honourable member, I am not able to understand what are the other matters to be decided by the Board. Power is given to the Board to decide all matters coming before it. Clause (2) is more an additional explanatory provision to enable the quantum of debt being decided. That does not mean that the Board has not got power to determine anything else.

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PRESIDENT : Has the Honorable member's difficulty been solved ?

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*) : I am still in the dark.

PRESIDENT : We will enlighten you. What is the darkness about ?

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*) : "or any other material points of difference between the debtor and the creditors...". I can understand that. But I cannot understand what that "*inter se*" means ?

The amendment was put to the vote of the House and lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Sir, I beg to move the following amendment :—

In Clause 10, *sub-clause* (2) *add the following Proviso* :

"*Provided also that the Board shall not re-open settled accounts for ascertaining the quantum of any debt except in the manner provided by Section 14*".

Sub-clause (2) regulates what the Board should do when there is a dispute as to the existence or the quantum of the debt due to any creditor or the assets of any debtor. It is said that "*the Board may then decide the matter after taking such evidence as is adduced by all the parties concerned, and such decision shall be binding on all parties in all proceedings before the Board*". But there is one exception and that one exception is described in the proviso. "*Provided that a decree of a civil court relating to a debt shall be conclusive evidence as to the existence and amount of the debt.*" Evidently the idea of the mover of the Bill is to apply the principle of *res judicata*, as it is understood in the Civil Procedure Code, to the proceedings before a Board. Section 9 of the Civil Procedure Code enacts the principle of *res judicata* as applied in civil proceedings. A person who is a party to a decree cannot recede from that decree. He cannot say that any point that has been raised and decided in the suit by a court should be decided in a different way in another suit. Section 9 deals with that matter in detail. I do not wish to take the time of the House in detailing in extenso the effect of Section 9. I want only another exception besides this exception. The exception that I want is that, if parties have chosen to settle their accounts and entered into a new contract, as it were, by a settlement of such accounts, it should not be open to the Board to say that all those things should be reopened. The Board should not be allowed to go into the ancient history of the debt, what the original debt was and how it has developed into the present amount and all that. There is no difference between the decree of a court where the rights of the parties have been properly adjudicated and a new contract where the parties have themselves chosen to settle the accounts and entered into a new contract. The only point of difference, if there is any, is where the parties have entered into the new contract by mistake or by misrepresentation or by any other circumstances which might have vitiated the contract. If, by mutual consent, the parties have entered into a new contract, why should the Board be allowed to re-open the same ?

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MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Why should the Board go against any other account?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): The Board should not. In my amendment I have used "settled accounts" in the sense that it may be a fresh contract or an account settled. In all those cases, the parties have come to a voluntary agreement regarding their rights and liabilities. The matter has been settled by them. If that has to be reopened, there must be some defect as in any other contract. Such cases are provided in Section 14. Clause 14 reads thus :—

> "If, in the opinion of the Board, there are reasonable grounds to suspect inequity in any transaction such as, for example, that it is tainted by fraud, misrepresentation, undue influence, coercion, mistake of fact, or collusion, the Board shall, in proposing and making the conciliation, go into the history of the transaction and may, in view of such history, reduce or disallow interest or even scale down the principal.
>
> EXPLANATION :—Nothing in this Section is intended to prohibit any disallowance of any claim on the ground that the transaction concerned is vitiated by fraud, misrepresentation, undue influence, coercion, mistake of fact or collusion and is therefore invalid in law."

All the circumstances herein mentioned are circumstances that vitiate any contract ordinarily. Therefore when there has been a fresh settlement of accounts, why should you say that it is not just like a decree of a court? In the case of a decree of a court, any party to the same is bound by it. In the same way, when a person has voluntarily agreed to a settlement and when there is no circumstance vitiating that agreement, he must stand by it. Otherwise, nothing will be safe. In the scheme of conciliation as now framed, the Board can go into the history of any transaction and there are no rules to follow. The only rule the Board has to follow is that stated in clause 10 (2), that "the Board may decide the matter after taking such evidence as is adduced by all the parties concerned, and such decision shall be binding on all the parties in all proceedings before the Board." Is the Board bound to follow the rules prescribed in the Civil Procedure Code? Is the Board bound to follow any settled rules of law? Are the decisions of the Board subject to appeal? Are they subject to revision? If we are to have a Board, why should we have a Board which does not follow any principle of law? If the Board should exist, it should work properly. All persons, whether debtors or creditors, must go with confidence to the Board where they can be sure that their claims will be heard and adjudicated upon. But, on the other hand, it is said that the Board need not follow any rules of procedure. Their decisions are not subject to appeal. Only if there is a decree of a court, only then is the party safe. If he has a decree, he need not produce other documents. Now, Sir, the position is this. The Board has all the powers of the Court under the Civil Procedure Code. It can call upon the creditor to produce his books of account. It can call upon the creditor to give evidence on oath. He can be asked to divulge any secret. He may be asked to place all his cards and there is no guarantee that he will get his amount. The best he can hope for is a certificate and nothing more. For that he has to lay open all his accounts and all his business

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[Mr. R. Sambasiva Aiyar.]

secrets. But it is not even said that an account settled by voluntary consent is of any value. So I submit, Sir, that this is a very important amendment which must be accepted.

MR. PACODE A. NARAYANA PILLAI (*Vilavancode*): Is not a decree of a Court subject to revision?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): No; except when the same is vitiated by certain circumstances.

A settled account, I say, is a matter which a Board shall not re-open. The Board should not go behind the contract voluntarily entered into by the parties.

MR. K. P. KRISHNA MENON (*Parur*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I must concede that there is great force in what Mr. Sambasiva Aiyar stated in support of the amendment. But it seems to me that, for practical purposes, this amendment has no value. When the Conciliation Board is given full power to reduce the debt, even the principal of the debt and curtail interest, what is it that we are going to gain by putting such restrictions on the power of the Board?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Then may I know why there was necessity for this proviso that a decree of a civil court relating to a debt shall be conclusive evidence as to the existence of the amount of the debt?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That is for the purpose of reducing the scope of the enquiry. Even after the court has pronounced on the quantity of the debt, the Board should not proceed to enquire into it. It is opposed to public policy; and secondly, it will lead us nowhere.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Will not the scope of the enquiry be reduced if settled accounts are taken as conclusive evidence?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It may be reduced. That is why I said there is force in what Mr. Sambasiva Aiyar said in support of the amendment But, for practical purposes, it is of no value. For, the Board is given full power even to reduce the debt. For that purpose it may be necessary for the Board to go into the history of transactions, although it may not always be necessary. Mr. Sambasiva Aiyar said that, in cases where the settled account is vitiated by fraud, misrepresentation, undue influence etc., there is Section 14 under which the Board can enquire into the transaction. What Section 14 lays down relates to the case where the Board *shall* go into the history under certain circumstances. What is intended is, if these circumstances exist, the Board should always go into the history of the transaction. In other cases, it is entirely left to the discretion of the Board. Having regard to all the circumstances, the Board can curtail interest or scale down the

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principal. For that, it may be necessary to reopen settled accounts and find out if there is any circumstance justifying reduction. Take, for instance, a transaction in which the principal of the debt is Rs. 1,000, and it is settled after two years at Rs. 2,000, with an interest of 18 per cent., per annum and even compound interest. No doubt, the settlement is an agreement between the parties and it is not vitiated by fraud and other circumstances. It may have been done with open eyes. If the Board proposes to reduce the amount of the principal, then it may be necessary to go into the history of the transaction and find out what would be the amount that the Board may justly reduce. The Board may, for instance, say that this transaction includes 18 per cent. interest and that the Board will give only 12 per cent. interest. It may be interference with the sanctity of the contract, I grant. But, as a matter of fact, as Mr. Puthupalli Krishna Pillai suggested by a question, we are interfering with contracts. In respect of a promissory note executed say on the 1st of Chingom, the Board can interfere with it on the 2nd of the same Chingom. Then why not the Board interfere with a settled transaction? The Board exists for the purpose of interfering with contracts and to reach some adjustment. But this adjustment is not *binding* on the parties The amendment has therefore to be opposed though in theory there may be some force in what Mr. Sambasiva Aiyar said.

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*): Sir, with your permission, I shall add a few words. Here I am in a very fortunate position because the Law Member has said three times that there is great force in the contention placed before the House by Mr. Sambasiva Aiyar. Sir, the Board is invested with sufficient powers and they must have abundant discretion. I accept that position. But it does not mean, Sir, that we should abolish the ordinary principles of law in order to enable a Board to drive a coach and pair over every rule of law. To my mind, there is no difference between a settled account and an actual payment in the majority of cases. To draw a parallel, Government was pleased on the recommendation of this House to remit the payment of tax. But for that reason the person or set of persons who have actually made payment cannot ask for refund.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Why not?

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*): I have never heard of instances in which people who have paid tax have been refunded.

MR. K. R. ELENKATH (*Kalkulam I*): Can they not ask for adjustment of the tax paid, for future tax?

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum—Urban*): Readjustment is different from repayment.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Suppose the Board makes mistakes?

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*): Sensible people do not make many mistakes. Law is always for sensible people and the presumption is every man knows the law.

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[Sadasya Tilakan T. K. Velu Pillai.]

As conceeded by the Law Member, if there are circumstances such as fraud, misrepresentation, etc., the Board may reopen settled accounts.

MR. K. R. ELENKATH (*Kalkulam I*) : If this amendment is accepted, will settled accounts come under this ?

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*) : If it is put in this loose fashion, all that will happen.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Is it the member's point that the scope of the enquiry can be limited and the Board can be made to come to conclusions expeditiously if this is passed ?

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*): The Board should have ample powers and should conduct enquiries as promptly as possible; but they should not be encouraged to override the rules of law.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : There appears to be some misapprehension in regard to the powers of the existing Civil Courts for reopening settled accounts. It has been stated in absolute form that civil court has ordinarily no power to reopen settled accounts. I beg to differ emphatically from that view. Accounts settled are always liable to be reopened on the plea of surcharge or falsification. If there is decidedly one entry which is false out of 1,000 entries in an account already settled, it is always open to the defendant to point that out to the civil court and the civil court has ample power to reopen the whole account and settle the account in the form in which it ought to be done. That is the provision of law. If Mr. Sambasiva Aiyar's amendment is accepted, that right, which every debtor has in a civil court when the matter comes before the civil court for pointing out to the court that the account is surcharged or falsified, will be lost when the matter is brought before the Board.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : May I point out to the member that the amendment specifically says that the Board shall not reopen settled accounts except in the manner provided by Section 14. That is, the Board is at liberty to reopen when the circumstances stated in Section 14 do exist.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Section 14 deals only with cases of contracts tainted by fraud, misrepresentation, undue influence, coercion or mistake of fact. By way of explanation the Select Committee has stated that, if such a contract is vitiated by fraud, coercion, etc , the general law laid down in the Law of Contract must prevail. That is to say, the whole thing must be tainted by fraud or undue influence or misrepresentation etc. A plea of surcharge or falsification is not a plea that the transaction is tainted by fraud or undue influence or coercion. There is that distinction to be borne in mind.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Does not mistake of fact come under surcharge or falsification?

MR. PUTHUPPALLI S. KRISHNA PILLAI (*Quilon II*): No; it does not. By a careful reading of the authorities on the subject, I have found that the plea of surcharge or falsification is not the same as the plea that a transaction is tainted by fraud, misrepresentation, etc.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Is it tainted by *inequity*?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Yes, it may be. It is stated there that, when the transaction is tainted by fraud, misrepresentation and all that, it is liable to be reopened wherever justice or equity demand it. That is only one aspect. There is yet another aspect. My friend's statement, if it is strictly interpreted, would be applicable only to accounts settled which, in the generality of cases, would bind only in the case of claims brought forward by Hundi merchants in regard to transactions entered by them.

In the case of a hypothecation deed, where the debtor has entered into the transaction with full knowledge of the implication and after full receipt of the whole consideration, the Clause gives the power to the Board to enquire into the previous history of the transaction and to scale down or even deny interest altogether and also to scale down the principal itself. The Board is given the same powers with regard to pro-notes also. Where is the difference, I ask, between hypothecation deeds and pro-notes on the one hand and accounts stated on the other? I cannot find any difference between the two in this respect. As a matter of fact, it is the accounts stated which require careful prying into more than hypothecation deeds or pro-notes. My friend Mr. Sambasiva Aiyar stated that, in the case of accounts stated, a fresh contract arises. If that is so, I can say that fresh contracts arise in the case of hypothecation deeds and pro-notes also. The Law Member said that there is great force in Mr. Sambasiva Aiyar's argument. For my part, I am unable to see that there is any force in the argument. Therefore, no reservation need be provided in favour of accounts stated.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): One word, Sir, by way of reply, with your permission, because there has been some misrepresentation.

PRESIDENT: There is no right of reply to the mover of an amendment.

The amendment was then put to vote and lost.

The question that Clause 10 do form part of the Bill was put to vote.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose it, Sir.

The motion that Clause 10 do form part of the Bill was carried by the House and the Clause was added to the Bill.

(At this stage the President left the Hall for a few minutes and the Deputy President took the Chair).

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Clause 11.

DEPUTY PRESIDENT : The question is that Clause 11 do form part of the Bill.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I oppose it; and in so doing, I submit—(*Cries of Order, order*).

DEPUTY PRESIDENT : It was only a few minutes ago that the President gave a ruling that it would not be right on the part of a member to make any elaborate speech when a Clause is put to the vote after the amendments to it are disposed of. I was also more or less of the same view during the last two days. When Mr. Sambasiva Aiyar, the other day, wanted to speak, it was considered even by the official member in charge of the Bill, that Mr. Sambasiva Aiyar might be given an opportunity as a special case; and therefore it was that he was allowed to speak on a former occasion like this. Really he has no *right* to make a speech at this stage.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I oppose the Clause, Sir.

The question that Clause 11 do form part of the Bill was put to vote and carried.

The Clause was added to the Bill.

Clause 12.

DEPUTY PRESIDENT : The question is that Clause 12 do form part of the Bill.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I oppose, Sir.

The question that Clause 12 do form part of the Bill was put to vote and carried.

The Clause was added to the Bill.

(At this stage the President returned to the Hall and re-occupied the Chair).

New Clause 13.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*) : I beg to move the following amendment :

Add, after Clause 12, following as Section 13 and renumber the next as Section 14 :

" 13. Where in any conciliation proceedings any debt of a creditor is contested either by the debtor himself or by the creditor, the applicant for conciliation or all others interested therein shall be referred to the civil court ordinarily having jurisdiction in the matter for obtaining its decision on the dispute within a prescribed period and the conciliation proceedings shall be stayed until the production of a copy of the said decision by any party. The conciliation concerned shall finally be dropped if within the time fixed or extended by the board the said copy is not filed "

Sir, Clause 12, provides for enquiry or trial by the Board. The functions of the Board are twofold. One is to frame the conciliation agreement under Clause 16, and the other is to send to the court of the District Munsiff a certificate of conciliation under Clause 17 of the Bill. When the debt under dispute is denied by the debtor, it is not possible under these provisions for the Board to deposit the conciliation agreement. The Board can do it only if the parties come

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to terms. When the parties do not come to an agreement, what the Board has to do is to file a certificate. So the provisions contained in Clause 11 come into play only for the purpose of filing the certificate. Now, what is the effect of this certificate? It gives power to the Court to disallow interest and costs.

It will be seen from what I have stated that the finding of the Board, on the question of fact as to whether a debt is true or not, is not binding on the civil court. Clause 23 of the Bill provides that the decision of the Conciliation Board shall be final. There is no provision for appeal or revision. Therefore, whenever a debt is denied by a party, it will be well that the Board does not go into that question of fact and that the Board leaves the parties to go to a civil court.

MR. A. THANU PILLAI (*Trivandrum—Rural*): On a point of order, Sir. This amendment seems to be opposed to Clause 10 (2) that the House has accepted already.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sizkar Vakil*): Yes. Substantially, this amendment goes against the provision contained in sub-clause (2) of Clause 10; and therefore it is out of order.

MR. V. RAMAKRISHNA PNICKAR (*Kartikapalli II*): Clause 10, sub-clause (2) relates to the quantum of debt, whereas my present amendment deals with the question as to what should be done if the debt itself is denied by the debtor.

PRESIDENT: If the honourable member will carefully read his amendment and Clause 10, sub-clause (2), he will find that they are substantially the same. I therefore rule out the amendment.

Clause 13.

MR. R. SIVARAMAN NAIR (*Tiruvalla II*): Sir, I beg to move the following amendment:

In Clause 13, *sub-clause* (1), *add the words "and priorities" after the word equities".*

Sir, when there are two or more encumbrances on a property, it is only fair that, in conciliation, the various transactions, which have resulted in the various encumbrances, are also taken into account in this order. The Bill does not provide anywhere that the priorities of the various transactions of the debtor should be taken into account. It is nothing but justice that a man who advances money on a property knowing full well that it is encumbered is placed after the creditor who holds the first charge over the property. The priorities of the several creditors should also be considered by the Conciliation Board. I therefore place the amendment for acceptance by the House.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): I second it.

MR. KAYALAM PARAMESWARN PILLAI (*Additional Head Sirkar Vakil*): I oppose it. It will be seen that in Clause 13, the particulars given in sub-clauses (a) to (j) are not the only circumstances that the Board may consider. Clause 13 reads thus:

"In proposing and making the conciliation, the Board may take into consideration the following *inter alia*, namely, ..."

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The Clause mentions only the most important points; the Board may consider other points also.

PRESIDENT: The provision in Clause 13 is illustrative and not exhaustive.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, Sir.

MR. R. SIVARNMAN NAIR (*Tiruvalla II*): Is not the question of priority as important as the several others mentioned there?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No; having regard to the purposes and consequences of conciliation, this does not seem to be so important.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Is it therefore the opinion of the Law Member that a prior creditor may be made a subsequent creditor and a subsequent creditor given first charge?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I take it that Mr. Krishna Pillai asks for a mere possibility. Then I say that it is just possible; but for practical purposes, it is not at all likely.

The amendment was put to vote and declared lost.

MR. R. RAMAN PILLAI (*Changanacherry* cum *Peermade II*: Sir, I beg to move the following amendment:

"*In Clause 13, sub-clause (f) delete the words 'the character of debt as, for example, whether it is secured or unsecured and.'*"

Sir, whether secured or unsecured, the conciliation of a debt is to take place and instalment payments are to be allowed only when security is given by the debtor for the debt. Then, why should a secured debt be differentiated from an unsecured debt and a higher interest allowed on unsecured debts is a matter which I cannot understand. Unless the debt becomes a secured debt, no effective conciliation will be made. Therefore the consideration whether the debt is secured or unsecured is not at all necessary. So I move my amendment.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. Whether the debt is secured or unsecured is one of the matters that the Board should ordinarily consider; and I think therefore that there is no necessity for its deletion.

The amendment was put to the vote of the House and declared lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I beg to move the following amendment:

"*Delete sub-clause (i) of Clause 13.*"

Clause 13 enumerates, at least illustratively, the more prominent of the considerations that should weigh with the Board in proposing and making a conciliation. One of the items mentioned very prominently, though illustratively, is the occupation, needs and other economic conditions of the creditor. Note the words 'of the creditor'.

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Now, Sir, the object of the Bill is to relieve agricultural indebtedness. It is those people who are unable to pay that are sought to be covered by this Bill. But why should we go beyond that? Is it intended to penalise the people who are not indebted? I submit, Sir, that the needs, occupation and other economic conditions of the creditor should not be considered at all by the Board when proposing or making a conciliation. The condition of the debtor, whether he is in a position to pay, what his needs are, what his assets are, what his liabilities are, whether there will be a sufficient margin of profit for his existence after paying his debts, these are considerations that should be before the Board. I submit that these are the *only* considerations that should weigh with the Board when proposing and making a conciliation.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Suppose the creditor is heavily indebted.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Then let him apply to the Board as a debtor.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): If he is a non-agriculturist?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Let him suffer because we intend by this Bill to provide only for the debtors who are agriculturists. It is not the object of *this* Bill at any rate to provide for non-agriculturists.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): May not the creditor be an agriculturist?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Yes, then also he can apply to the Board. If he is a creditor and if he is not indebted, I submit it is very hard to say that all his economic conditions should be gone into. Sir, the Bill goes further than the object stated in the preamble; and I say, Sir, that this clause is unnecessary.

MR. K. P. KRISHNA MENON (*Parur*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. Ordinarily, no doubt, as Mr. Sambasiva Aiyar, said, it is the debtor's condition that has to be looked into. But we should indicate to the Board that the creditor's condition also may be taken into consideration. Now the question is why should the creditor's condition be looked into by the Board. There may be various reasons. It may be that the debtor is a very rich man and the creditor a poor man. The debtor may have assets amounting to, say, a lakh of rupees whereas the creditor may have only, say Rs. 150. In such a case the creditor stands in great need of sympathy. In this case no amount should be reduced. All that is intended by this sub-clause is that such matters also should be taken into consideration by the Board; and if this is not embodied, the Board will not at all be inclined even to consider it. Therefore it seems to me to be very necessary.

The amendment was put to the vote of the House and declared lost.

PRESIDENT: The question is that Clause 13 do form part of the Bill.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I oppose it.

The motion was put to vote of the House and carried. The Clause was added to the Bill.

Clause 14.

MR. K. P. KRISHNA MENON (*Parur*) : I beg to move that—

"*Clause 14 as well as the Explanation to the same Clause be deleted.*"

In doing so, I submit that the establishment of Boards is mainly intended for amicable settlements between the debtor and the creditor. As such, if this section is allowed to continue, the important function of the Board in conciliating debt will suffer by trying disputed cases, going into the history of the cases and reopening the transactions, etc. I think cases of a disputed nature have to be referred to a civil court where they will properly be tried after hearing the evidence.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Sir, in seconding this amendment, I wish just to say a word. The Board is not expected to be a body that knows any law. It is not expected to know any rule of evidence. Nevertheless, this Board is now invested, I may say, with terrible powers because it has to decide —

PRESIDENT : May I beg honourable members not to go on repeating arguments which they have once mentioned ?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Sir, I would only submit that, since the Board has to decide upon the facts as they are, without going into the details and applying their mind to the legal technicalities, this Clause is not necessary.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Sir, I oppose this amendment. It is not a question of the conciliation officers being lawyers or non-lawyers. They will certainly be men of common sense. When a Board tries to conciliate between a debtor and a creditor, it should deal justice without being bound by any technicalities of law. Free from such technicalities, it should look into the history of the transaction if and whenever there is any suspicion that there is any inequity in the transaction.

The amendment was put to the vote of the House and declared lost.

PRESIDENT : The question is that Clause 14 do form part of the Bill.

MR. R SAMBASIVA AIYAR (*Kunnatnad II*) : I oppose it, Sir.

The motion was carried and the Clause was added to the Bill.

New Clause 15.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*) : Sir, I beg to move the following amendment :—

Add after Clause 13, the following as Section 15 and re-number the succeeding Clauses :

"*15. Nothing in this chapter authorises a board to effect conciliation in such a manner as to interfere with the rules of priority except in so far as reducing or disallowing interest or scaling down the principal as shown in the next following section.*"

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, on a point of order. This amendment seems to be sub-

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stantially the same as the one that was attempted to be moved to clause 13. Perhaps it may be possible to draw some distinction but substantially it is the same.

PRESIDENT: What do you say to that point of order, Mr. Ramakrishna Panickar?

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): I beg to submit that the matter contained in my present amendment is not substantially the same as was contained in the amendment referred to by the Law Member. That amendment was to include in Clause 13 the question of priority.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): In the light of that explanation, I withdraw my objection.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I rise to a point of order. This must have come before Clause 14 and not after it.

PRESIDENT: That is to say, it should not be an amendment to Clause 15.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Yes, Sir, because what he says is:—

> "Nothing in this chapter authorises a board to effect conciliation in such a manner as to interfere with the rules of priority except in so far as reducing or disallowing interest or scaling down the principal as shown in the next following section."

We have already passed that section which is here referred to as 'the next following section'.

PRESIDENT: That is a very relevant objection.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): Sir, I have to submit a word by way of explanation.

PRESIDENT: The only question is whether this amendment should not have been tabled under Clause 14. You have missed your chance unfortunately.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*) Sir, I have a right to move the amendment at the place where it is given.

PRESIDENT: Let us hear what you are going to say.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): Sir, the question of priority was not included in Clause 13 for being considered by the Board. Nobody will doubt that a right of priority will be questioned by the Board. A secured right, of course, is a right on immovable property and therefore that matter cannot be disregarded by the Board. Therefore this amendment is quite necessary.

MR. R. RAMAN PILLAI (*Changanachery cum Peermade II*): I second the amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose this amendment. The very nature of the Board demands that the Board should be given plenary powers to adjust between the parties. They should not be hampered as is proposed by the amendment.

The amendment was put to vote and lost.

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MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I move the following amendment:

"In Clause 15, sub-clause (1) (a), delete the words "forthwithor" in line 1.

The reason for this amendment is that the debtor will not be in a position to pay the money forthwith. He must be given some time. So I propose that the words "forthwith or" be omitted.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): May I draw the attention of the member to the word "within a time to be fixed by the Board" occurring after the words he seeks to amend?

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): All that I say is that the discretion may be left to the Board.

MR. K. R. ELENKATH (*Kalkulam I*): If the conciliated amount of debt goes up to the amount which the debtor cannot pay, will not this be against him?

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): He will pay the amount if it is in his power.

MR. K. R. ELENKATH (*Kalkulam I*): Why should the Board be prevented from saying "forthwith"?

MR. R. RAMAN PILLAI (*Chenganachery* cum *Peermade II*): My opinion is that it will be injurious to the debtors.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*) I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, it is only as illustrations that these sub-clauses have been put in. The Board has ample discretionary powers. Nothing would be lost by this word being retained there and nothing would be gained by omitting it.

The amendment was put to vote and lost.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): I move the following amendment:

"In Clause 15, sub-clause (1) (b), substitute the words "not more than" for the word "say" in line 1."

I beg to submit that the word "say" will mean that the amount to be fixed is definite, whereas there may be appropriate cases in which a lesser amount may be quite sufficient. I, therefore, propose that the words "not more than" be substituted for the word "say".

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I have only to repeat the argument I advanced previously. The Board has ample discretionary powers.

The amendment was put to vote and lost.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I move the following amendment:

In Clause 15, sub-clause (1) (b) add "or one-eighth" after "one-fourth" in line 1.

The idea of this sub-clause is illustrative. But illustration (*b*) says that a portion say one-fourth of the assets of the debtor may be left to him. It may be that more than one-fourth may be available or it may be that less than one-fourth of the property may be available. Therefore to make the illustration complete I have moved this amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): What would the member say if it is put as one-third?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): It may be one-third. It cannot be that the debtor will in all circumstances be able to get his one-fourth free from all encumbrances. Therefore, to make the matter clear, some more words may be added. Hence my amendment.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): I rise to a point of order. The motion is identical with a previous amendment.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I may assure the member that I have not moved any identical amendment.

PRESIDENT: It is not identical.

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*): I second the amendment,

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is only an example and does not mean more than that.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Why not make it clear?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Twenty-three Honourable members of this House thought it to be clear enough.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): At any rate not all the twenty-three.

The amendment was put to vote and lost.

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*): I move the following amendment:

In Clause 15, add the following Proviso at the end:

"Provided that under no circumstances any reduction shall be made with respect to debts incurred after the date of this Regulation".

ഈ സഭ അംഗീകരിച്ചിട്ടുള്ളതായ ഒരു തത്വത്തെ ഒന്നുകൂടി വിശദപ്പെടുത്തുന്നതിനു മാത്രമാണ് ഈ ഭേദഗതി ഉദ്ദേശിക്കപ്പെട്ടിട്ടുള്ളതു്. ഇന്നു നിലവിലിരിക്കുന്ന കടങ്ങൾക്കുമാത്രം നിവാരണോപായങ്ങൾ നിർദ്ദേശി

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[T. S. Jayantan Nambootiri.]

ച്ചാൽ മതിയെന്നും ഭാവിയിലുണ്ടാകുന്ന കടങ്ങൾ കൺസിലിയേറു് ചെയ്യേണ്ട. ആവശ്യമില്ലെന്നും ഈ സഭ തീരുമാനിച്ചുകഴിഞ്ഞിട്ടുണ്ടു്.

പരിതസ്ഥിതികൾ സൂക്ഷ്മമായി അറിഞ്ഞുകൊണ്ടാണു് ജനങ്ങൾ ഇനിമേൽ കൊടുക്കൽവാങ്ങൽ നടത്തുന്നതു്. പലിശക്രമത്തിനു സാരമായ വ്യത്യാസങ്ങൾ ചെയ്യുന്നതിനു് ഈ ബില്ലിൽ വ്യവസ്ഥചെയ്യുന്നുണ്ടു്. കുറഞ്ഞ പലിശക്കു കൊടുക്കുന്ന സംഖ്യകളും രഞ്ജകസമിതിയുടെ തീരുമാനത്തിനു് വിധേയമാകുമെന്നു നിശ്ചയിക്കുന്നപക്ഷം ഭാവിയിൽ ക്രെഡിറ്റു് ഇല്ലാതെയാകുന്നതാണു്.

ക്രടാതെ ഭാവിയിലെ കടങ്ങളും കൺസിലിയേറു് ചെയ്യുമെന്നു വരുന്നപക്ഷം കൺസിലിയേഷൻ ബോർഡുകൾ എല്ലാക്കാലത്തും പ്രവർത്തനം നടത്തേണ്ടിവരുന്നതും അതിനു് വേണ്ടിവരുന്ന വൻപിച്ച ചെലവുകൾ ഗവണ്മെൻറു വഹിക്കേണ്ടിവരുന്നതും ആകുന്നു. തക്കതായ ആവശ്യം ക്രടാതെ ഒരുസ്ഥാപനം എക്കാലത്തും നിലനിറുത്തണമെന്നു ഈ സഭ നിശ്ചയിക്കുകയില്ലെന്നാണു് എന്റെ വിശ്വാസം.

നാലാം ക്ലാസ്സിനു് മി. ഗോമോദരൻആശാൻ ഇവിടെ അവതരിപ്പിച്ചതും ഈ സഭ സ്വീകരിച്ചതും ആയ ഭേദഗതിയിലെ തത്വംതന്നെയാണു് ഈ ഭേദഗതിയിലെയും തത്വമെന്നുള്ളതുകൊണ്ടു് സഭ എന്റെ ഭേദഗതിയെ അംഗീകരിക്കുമെന്നു വിശ്വസിക്കുന്നു. അതിനാൽ ഈ സഭയുടെ സ്വീകരണത്തിനായി ഞാൻ ഈ ഭേദഗതി സമർപ്പിച്ചുകൊള്ളുന്നു.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I second the amendment. I would submit that these Conciliation Boards are created for a special purpose. If we keep these Boards as permanent institutions, then the credit of the country will be completely ruined. I can understand the principle of arbitration when it is voluntary. But here this conciliation is not voluntary. It is a kind of imposed conciliation.

PRESIDENT: Will the Honourable member please sit down? A happy announcement is proposed to be made.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I am prepared to accept this amendment. It is only fair that debts contracted after the commencement of this Regulation are not sought to be reduced.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I oppose the acceptance of the amendment.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Since it has been opposed, may I resume my speech?

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PRESIDENT: Very well.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): It is very common for the merchants to refer their disputes to conciliation. It is also very common among Governments. For instance, when there is a difference between the Government of India and the Government of Travancore, the Government of Travancore sends a representative and the Government of India also sends a representative and they meet together and come to a decision, and both parties agree to that decision.

There is no object in keeping the Boards as a permanent institution. They have not been set up by the consent of the parties to have their claims adjudicated upon. There are enough provisions in the Civil Procedure Code which refer to arbitration. There is a special order relating to arbitration, I do not remember its number. When parties go before a court, they can refer the matter to arbitration. Even before the matter goes to the court, they can refer the matter to arbitration and obtain an award. Here we have a special problem, the problem of agricultural indebtedness. It is stated in the Statement of Objects and Reasons that the debts are due to the present economic depression. So the agriculturists must be saved and therefore the Conciliation Boards are thought to be necessary. But these Boards function not because the creditor agrees to conciliation but because, if he does not agree, he will be penalised. No penalty is attached to a man who does not agree to abide by an award of a tribunal to whose jurisdiction he need not submit.

The difference between the Conciliation Boards to be established under this Regulation and arbitration tribunals whose decisions parties agree to accept as binding is too obvious to need further comment. If the Conciliation Boards are continued as a permanent institution, the credit of the country will be at stake.

Let us see what Section 28 says:

> "28. Except for special reasons to be recorded in writing, no court of law shall entertain, or allow to be prosecuted, any suit, application for the execution of a decree or other proceedings for the recovery of any debt for the settlement of which an application is pending before a board."

This Section, read along with the amendment passed yesterday, to Clause 3 has potentialities for causing general deadlock in the administration of civil justice in the whole State. The amendment passed is to the following effect:

> "In Clause 3, sub-clause (1) (b), add the following Proviso:
>
> Provided that the jurisdiction of the boards established under Section 3, Clause (1) (a) shall be so defined and adjusted as to include the whole State."

The Government are bound to establish Boards not in one place but in every square inch of territory in Travancore. The Boards will function as a sort of parallel institution to civil courts.

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PRESIDENT: Order, order. Before we adjourn for lunch, I think I must mention that a requisition has been put into my hands by certain honourable members of this House who themselves seem to be dissatisfied of the progress that has been made so far by this legislation now under discussion. I think the only solution of that problem will be to treat the Travancore Legislative Assembly more or less as the House of Commons, and indulge in a night sitting, that is to say, after dinner. If that is not inconvenient to the House, then they suggest that some additional day may be allotted for the purpose of finishing the discussion of this Bill. I am, however, glad to notice the feeling on the part of the honourable members who express their great desire to somehow finish the discussion of this Bill so as to enable it to be passed into law as early as possible. As regards the session being held after dinner, no doubt it will be agreed to that it is a great advantage to Government in that there will be very few speeches. (*Laughter*). For, we are not yet accustomed to sit at a table and take to discussion of serious matters after dinner, for, our ideas go forth to some other place after dinner. At any rate, that perhaps seems to me not within the range of practical politics. I shall be watching keenly the progress that the Bill will make until tomorrow evening; and if it is considered necessary to add a day more, I shall consider that question very seriously. I must also testify, during my experience of this morning session, to the very great help that the honourable members have given to the Chair to get through as large a number of amendments as possible within the short period of one hour and a half. I hope the same activity will be displayed in the afternoon as also tomorrow, both in the forenoon and afternoon.

There is one other matter to which I should draw the attention of the House. It is well known that this House was summoned specially for the purpose of disposing of this important piece of legislation, not merely important but urgent from every standpoint. Fortunately or unfortunately, there was a tendency to take away a portion of the time of the House for the purpose of discussing adjournment motions. Nearly two hours of the time was taken up on Saturday afternoon to no effect. Now, there is another adjournment motion tabled this afternoon. At the time when the adjournment motion was made, it might have been said that the matter which was proposed to be discussed was regarded as urgent. But unfortunately that aspect of the case has been lost since. For, all the toll gates have been auctioned by Government. The urgency has been lost. I suggest to the honourable member who has given notice of the motion whether he could not reconsider the position; and if he thinks he need not move it, then there will be ample time for the House to utilise that time as well for the purpose of considering as many amendments as possible. I only suggest that. If it does not mean any inconvenience either to the honourable members or to the Deputy President, I think, it will be worth while to sit for a little longer beyond 5 o' clock and see that many amendments are dsiposed of.

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Before I close, I think I should repeat what I said the other day. I had disallowed certain motions the other day as being outside the power of the House to impose additional charge on the revenues of Government. I had also mentioned then that the amendments are under close examination, for finding out what more amendments offend against that rule. It has been since discovered that amendments Nos. 130, 141, 148 and 216 will be out of order, in that they seek to impose additional burden on the revenues of the State. Amendment No. 130 has already been disposed of, because it was not moved. The ruling therefore holds good with regard to the other three amendments. The House will now adjourn and meet again at 2 o' clock.

The House adjourned at 1-10 P. M. and met again at 2 P. M. with the Deputy President in the chair.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, in continuing the speech, what I have to submit is this. According to the amendment of Mr. Velayudhan Pillai, which was accepted by the House yesterday, the Board is to have its jurisdiction throughout the State. According to Section 28, when an application is presented before a court, all further proceedings are to be stopped. Take these two facts and read it with the present amendment. What will be the effect? It will have a paralysing effect on the credit system of the country. Therefore the amendment of Mr. Nambutiri is quite necessary.

Another aspect of the matter is this. Why should a person who borrowed money after the commencement of this Regulation be given the opportunity to get his debts conciliated through the Board? We are legislating for an extraordinary situation brought about by the economic depression. Only debts incurred up-to-date need concession. Conciliation is resorted to only in extraordinary circumstances; and arbitration is the established principle. Are we to encourage defiance of contractual obligations? No, certainly not. The arguments advanced for making Conciliation Boards a standing institution can be characterised only as sentimental humbug.

DEPUTY PRESIDENT: How does the question of freedom of contract arise?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): It arises in this way. A enters into contract with B. Then he has to fulfil certain obligations. To escape from the obligations, A resorts to a Conciliation Board. The sanctions of law are powerless to enforce him to fulfil his obligations. The difficulty arises that way.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): On a point of order. May I know whether they are not general criticisms against the Board and repeated by the members?

DEPUTY PRESIDENT: That is why I asked Mr. Sambasiva Aiyar to confine himself to the particular aspect of the matter.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I have finished, Sir.

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MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I oppose the amendment which has been moved by Mr. Jayantan Nambootiri and supported by Mr. Sambasiva Aiyar. I oppose this on the main ground that it contravenes the principle of free discretion allowed to the Board. It has been conceded that the Board must have absolute freedom to settle the debts. The amendment does not seek to take away debts incurred hereafter from the purview of the Board. It allows the Board to consider such debts as well. But it wants to create an obstacle to the discretion of the Board and says, provided that under no circumstances any reduction shall be made with respect to debts incurred after the date of this Regulation. I fail to see the justification for this inroad into the principle of free discretion that has been granted by so many other clauses to the Board. This amendment, if it should be acceptable, it must be taken for granted that, as soon as this Regulation is passed, from that moment. all the difficulties of the ryots cease and the remedial measures suggested herein become unnecessary. Because, it presumes that from the date of passing of this Regulation, there will be no justification for such ameliorative measures, I do not think this House will be prepared to accept such a proposition, because it will be contrary to the definite opinions it has expressed. Why is it that all these ameliorative measures are allowed to the debtors? Is it not because of special circumstances, because of the fall in prices, because of the exceptional circumstances and difficulties under which the agriculturist is? Now if anybody could guarantee to this House that, after the passing of this Regulation, an entirely new set of circumstances will come into existence, I can understand this amendment. Nobody can guarantee that. In fact, nobody has guaranteed that. My point is, nobody can say that. On the other hand, the contrary has been stated, that economic depression has come to stay, that difficulties of the ryots are not likely to be lessened in the near future. He has to pay conciliated debts. For that, he has to borrow and those borrowed amounts also have to be returned back. In cases where he is not able to pay, there must be a machinery for him to settle his accounts. It does not necessarily mean, Sir, that, because you go to the Board, at once the principal will be cut down, or the interest will be cut up. None of these things need happen. The whole circumstances of the debtor will be considered by the Board and a just, fair and equitable decision come to. If you are not granting that, then you are not trusting the Board. If you have a sneaky suspicion of the actions of the Board, the best thing is to suggest the abolition of the Board. As Mr. Sambasiva Aiyar said, say that the Board is useless and do not give power to the Board. If debts that have been contracted with the knowledge that these circumstances will come into being and there will be some difficulties for the debts being conciliated, why not the creditors who advanced money, seeing the difficulties in which the agriculturists are placed, be allowed to undergo the same sacrifices? People who have entered into fresh agreements with their eyes open, about the possibility of the agriculturist not being able to pay, why not they come to the Board? My friend Mr. Sambasiva Aiyar was saying that the credit of the country

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will be affected and this is all sentimental humbug, etc. To him it may appear to be like that. He may state it as a formula. Human affairs are not settled as formulas are solved. Where will the money go? I am sure a state of things has not been reached in this country when the capital will fly away so soon. There is no such panic. It is all make-believe and has no sincerity behind it. I think this motion is trying to whittle down the little help that becomes all the more necessary at this period when the agriculturist is trying to stand on his own legs. At this time to take away this important facility will be detrimental to his interests.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I know from the member whether the Conciliation Board is not deciding the details of the problem?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I refuse to be drawn into that irrelevancy because I am not here discussing the feasibility or otherwise of a Conciliation Board. That stage has passed. This House has accepted the necessity and the efficacy of Conciliation Boards.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) Is it not a fact that the House has accepted it as a temporary phase of solving the problem of agricultural indebtedness and not as a permanent feature?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I am aware that this has been accepted as a temporary phase. But that temporary period is not a period when this Regulation comes into force. It is three years after that also. I do not expect that, within that period of three years, things will suddenly change. So there is no knowing what things will happen and what will not. But the three years' limitation has been done with a view to see that this provision is not going to be permanent so that, as my friend and some others who feared, that capital might fly away, and that the sanctity of contracts will not be respected for an indefinite time. It is just for that three years' limit has been fixed. What has that to do with this amendment? This is entirely a new principle that is introduced here. This is a principle which goes to the very root of absolute discretion to the board. The boards can be given discretion with regard to debts already incurred on the passing of this Regulation. What is it which is extraordinary that is going to happen after the passing of this Regulation which necessitates a cancellation of all these ameliorative measures? I cannot find any basis for this amendment. Therefore I oppose the amendment. It goes counter to the principle of giving absolute discretion to the board.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): This amendment, as I understand it, is really a consequential amendment to the amendment which has been accepted by this House to the effect that it shall not be open to a debtor whose only debt is a debt incurred after the commencement of this Regulation to apply for conciliation, that is to say, that for the conciliation of past debts as well as future debts, it shall not be open to him to do so if he has only future debts. This principle has been accepted by this House.

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[Mr. Kayalam Paramesvaran Pillai.]

What is at the root of that principle is at the root of this amendment also to a large extent. What this amendment says is that a debt incurred after the commencement of this legislation shall not be reduced. I fully accept this amendment. He needs relief in respect of debts already incurred in circumstances which were not unfavourable to him. After incurring the debts certain things unfavourable to him happened, namely, the economic depression. But, in respect of debts incurred by him after the commencement of this enactment, no concession is necessary.

Again there is an other point, namely facility for borrowing.

This provision would openly tell the world that, whatever provisions may be made in regard to past debts, the creditor has nothing to be afraid in regard to debts incurred in future. That will induce the creditor to lend money and will afford facility to the debtor to borrow. It will not be said, I think, that he should be placed in such a way that he should for ever be unable to borrow. There must be some facility for him to borrow. If there should be some facility, then we should tell the world that this legislation will not touch future debts. On these grounds, I accept the amendment with the words " except with the consent of the creditor concerned " added to it at the end.

DEPUTY PRESIDENT: Does the mover of the amendment accept this?

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*): Yes, I accept the amendment

The amendment was then put to the vote of the House and carried.

MR. R SAMBASIVA AIYAR (*Kunnatnad II*): I demand a poll.

A poll was taken with the following result:—

AYES—31.

1	Mr.	N. Abdur Rahiman Sahib	17	Rao Bahadur Dr.	N. Kunjan Pillai
2	,,	C. V. Chandrasekharan	18	Mr.	P. C. Kurian
3	,,	S. Chattanatha Karayalar	19	,,	S. Nilakanta Pillai
4	,,	A. S. Damodaran Asan	20	Rao Sahib	S. Paramesvara Aiyar
5	,,	K. George	21	Mr.	Kayalam Paramesvaran Pillai
6	,,	M. Govinda Pillai	22	Dr. Mrs.	Poonen Lukose
7	,,	M. K. Janardhana Kamath	23	Mr.	V. Ramakrishna Panickar
8	,,	T. S. Jayanthan Namboo-tiri	24	,,	R. Sambasiva Aiyar
9	,,	N. John Joseph	25	,,	M. Sivatanu Pillai
10	,,	J. M. Joseph	26	,,	S. Thiraviam Nadar
11	,,	K. C. Karunakaran	27	,,	T. C. Thomman
12	,,	K. N. Kesava Pillai	28	,,	John Whitely Tolson
13	,,	T. T. Kesavan Sastri	29	,,	G. B. E. Truscott
14	,,	K. M. Krishnan	30	,,	V. K. Velappan Nair
15	,,	K. P. Krishna Menon	31	,,	T. P. Velayudhan Pillai
16	,,	Mr. Puthupalli S. Krishna Pillai			

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NOES—17.

1	Mr.	A. Easwara Pillai (Kalkulam II)	9	Mr.	K. Kunjukrishna Pillai
2	,,	A. Easwara Pillai (Kottarakara)	10	,,	M. K. Madhavan Pillai
3	,,	M. Mahomed Haneef	11	,,	K. Mahomed
4	,,	S. J. Nair	12	,,	Pacode A. Narayana Pillai
5	,,	T. C. Joseph	13	,,	G. Nilakantan
6	,,	Pottayil S. Krishna Panickar	14	,,	S. Nilakanta Pillai
7	,,	N. K. Krishna Pillai	15	,,	Edavanatt S. Padmanabha Menon
8	,,	T. Krishna Pillai	16	,,	Changanachery K. Paramesvaran Pillai
			17	,,	R. Raman Pillai

NEUTRALS—8.

1.	Mr.	V. T. Chacko	6	Mr.	K. Madhavan
2	,,	K. R. Elenkath	7	,,	Kainikara M. Padmanabha Pillai
3	,,	Antony George	8	,,	N. E. Varughese
4	,,	E. K. Kunjuraman			
5	,,	K. M. Kuriakose			

The question that Clause 15 as amended do stand part of the Bill was then put and carried.

The Clause was added to the Bill.

Clause 16.

MR. T. KRISHNA PILLAI (*Neyyattinkara II*): Sir, I beg to move the following amendment:—

In Clause 16, substitute the following for sub-clause (1):—

"If the creditors to whom not less than 60 per cent. of the debtors' debt are owing come to an amicable settlement with the debtor, such settlement shall be forthwith reduced to writing in the form of an agreement, recording the amounts payable to the creditors and the manner in which and the assets from which and the times at which they are to be paid. If the board considers the agreement reasonable and equitable, such agreement shall be binding on all the creditors of the debtor, inclusive of those who have not joined in the agreement, and the amounts due to such creditors shall be calculated on the same principles as those which were applied to the creditors who did join in the agreement. Such agreement shall, subject to the rules, if any, made by our Government, be registered according to the law relating to the registration of documents for the time being in force or filed in the Court of the District Munsiff having jurisdiction over the area in which the debtor ordinarily resides, and shall in either case have the force of a decree passed by such court and shall be capable of being put in execution as if it were a decree of such court".

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[Mr. T. Krishna Pillai.]

Sir, the amendment, though somewhat lengthy, is so simple and clear, that I do not think that any further detailed elucidation at my hands is necessary. If 60 per cent. of the creditors come to an amicable settlement of the debts, the remaining, that is 40 per cent. of the creditors, must be compelled to accept the decision arrived at by the Conciliation Board. Clause 16 lays down certain matters to be taken into consideration by the Board in settling the debts; and if the Board is to decide in accordance with those considerations, I am sure there will not be any hardship or heart-burning to either the debtor or the creditor. If 60 per cent. of the creditors are willing to accept the settlement, then it certainly indicates that the conciliation arrived at is just and reasonable. Besides it is not merely enough if 60 per cent. of the creditors consent. It is definitely laid down that the conciliation shall be binding on the rest of the creditors only if considered equitable and reasonable by the Board. So I submit that, if 60 per cent. of the creditors consent and, over and above that, if the Board considers the agreement to be reasonable and equitable, then I submit that it is not fair or reasonable not to ask the 40 per cent. of the creditors standing aloof to abide by the agreement. Probably it may seem that conciliation and compulsion may not go hand in hand in a statute. If it is our intention to give relief to the agriculturists by passing such a measure, I submit that it is necessary that a certain amount of compulsion should be introduced into this measure. To me it seems that without compulsion this Bill, as it is, will help only the creditor and not the debtor. Further, any legislation, in my opinion, if it is to be effective, some sort of compulsion, is also necessary. With these words, I move the amendment.

MR. K. M. KRISHNAN (*Ambalapuzha II*): I second it.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I may be permitted to move the next amendment standing in my name. It may be considered to be substantially identical with the one just now moved. But there is a slight difference.

DEPUTY PRESIDENT: Is it different from that?

MR. K. KUNJU KRISHNA PILLAI (*Quilon I*): Yes; there is a slight difference. Not merely 60 per cent. of the value of the total credit has to be taken into consideration but also 60 per cent. of the number of creditors. Both have to be taken into consideration. That is one difference.

DEPUTY PRESIDENT: You can move your amendment.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I beg to move:—

"*In Clause 16, sub-clause (1), delete the word "the" occurring after the word "or" in line 1 and add the words "sixty per cent. of the number of" and after the word "creditors" in line, add the words "owing sixty per cent. of the total amount due".*

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The Clause as amended will read thus : —

"If the debtor and the creditor or sixty per cent. of the number of creditors owing sixty per cent. of the total amount due appearing before the Board agree to the conciliation proposed by the board, it shall be reduced to writing in the form....."

The distinction between the amendment moved by Mr. Krishna Pillai and mine is only this. In my amendment, not merely sixty per cent. of the value but also sixty per cent. of the number of creditors as well must be present. This safeguard is provided because there may be one creditor who may be a relative and who may be owing a vast proportion of the amount due and he may collude with the debtor and make it very hot for the other creditors to come to an agreement. To avoid that, if sixty per cent. of the total creditors owing sixty per cent. of the total amount due to them agree to a conciliation which is thought to be reasonable by a Board on whom we have trust, if such a thing happens; then the remaining 40 per cent. should not be allowed to frustrate the work of the conciliation done till then.

MR. T. KRISHNA PILLAI (*Neyyattinkara II*): Is it not likely that 60 per cent. of the number of debtors may not own 60 per cent. of the debt?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): What I say is that both these conditions must exist, if a conciliation must be binding on the debtors.

DEPUTY PRESIDENT: You want the quantitative and the qualitative tests to go side by side?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Yes. This may occur only in very rare cases. At least in such cases the Board should not be allowed to frustrate the work that it has already achieved. Sir, this is to give some little binding force to the work of Conciliation Boards. Sir, first of all the Board must be supposed to come to reasonable and equitable conclusions when it draws up an agreement. Another condition fixed is that, if the vast majority of the creditors whose interest are also safe-guarded agreed to the conciliation agreement drawn up by responsible officer, I see no reason why it should not be accepted. There are similar provisions in other Bills also, though not exactly identical. In the Central Provinces Bill, I find that, if 40 per cent. of the creditors agree, then the agreemant shall be reduced to writing in the form of a decree and a certificate may be issued even if the debtor disagrees with them. In Madras, though there is distinction made between—

MR. P. C. KURIYAN (*Kottayam I*): Sir, if as I understand, the amendment is "if the debtor and the creditor or 60 per cent. of the creditors owing 60 per cent. of the total amount due etc.," I fear that 60 per cent. of the debtors may not own 60 per cent. of the debt..

DEPUTY PRESIDENT: He has not finished his speech.

MR. P. C. KURYAN (*Kottayam I*): I want to know whether 60 per cent. of the creditors owning 60 per cent. of the debts would not mean something different from what he said.

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MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I do not understand the question. Sir, what I was saying by this amendment was that, in cases where a vast majority of the creditors agreed to a settlement that has been arrived at, a few or one or two persons or a negligible minority should not be allowed to frustrate the effect of conciliation. In other words, the recalcitrant minority should not be allowed to frustrate the work that has been agreed to by the vast majority. That will make the work of the Conciliation Boards more effective, while it will not substantially affect any interest, any reasonale interest. That is all that I have to say with regard to the amendment.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): I second it.

MR. K. R. ELENKATH (*Kalkulam I*): Sir, I seek permission that the next amendment standing in my name may also be taken into consideration along with this.

DEPUTY PRESIDENT: The only difference in your motion is that instead of 60 per cent. you want to substitute 50 per cent. Your motion is not a formal one.

MR. K. R. ELENKATH (*Kalkulam I*): Sir, it is substantially different from Mr. Kunjukrishna Pillai's motion in this way that, while my motion contemplates within its scope 50 per cent. of the creditors, his motion contemplates 60 per cent.

DEPUTY PRESIDENT: That is why I said your motion is not formal, the difference being 50 instead of 60 per cent.

MR. K. R. ELENKATH (*Kalkulam I*): There is material difference also. My amendment will be more advantageous to the debtor in as much as it requires only half the number of creditors to agree to the compromise. Also the amount contemplated to be included at the time when the Board has to take into consideration the conciliation of debts is a lesser one, *viz.*, 50 per cent of the total debt.

DEPUTY PRESIDENT: You do not want even 51 per cent.

MR. K. R. ELENKATH (*Kalkulam I*): For that matter, Mr. Kunjukrishna Pillai did not say 61 per cent.

DEPUTY PRESIDENT: That is not the point. 51 is certainly more than 50.

MR. K. R. ELENKATH (*Kalkulam I*): Easiest facility should be given to the Boards to bring within these Boards a larger number of creditors to apply for conciliation. That is my point.

Sir, the Bill which is under consideration in Mysore takes the consent of 50 per cent. of the creditors to make the Board eligible for effecting a compromise. It is indeed hard on the debtors if the Board wants all the creditors to agree for a conciliation to be given effect to. Suppose there are 100 creditors to a debtor. If one of them is unwilling to be included in the conciliation scheme, the clause as it stands makes conciliation ineffective.

DEPUTY PRESIDENT: That point has been explained by Mr. Kunjukrishna Pillai.

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MR. K. R. ELENKATH (*Kalkulam I*): I only want that, even if the application is made by a lesser number of creditors, the Board should take into consideration and effect a compromise. I should think that 50 per cent. will be more advantageous in as much as a larger number of persons and a larger amount which is due to the creditors may be brought within the compass of the Conciliation Board.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): In that case will not 40 per cent. be sufficient?

MR. K. R. ELENKATH (*Kalkulam I*): I should think 50 per cent. is an agreeable number. I therefore move the following amendment: –

In Clause 16, sub-clause (1), delete the word "the" after the word "or" in line 1 and add the words "fifty per cent. of the number of", and in the same line add after the word "creditors" the words "owing fifty per cent. of the total amount due".

MR. N. K. KRISHNA PILLAI (*Neyyattinkara I*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose all these amendments. As a general ground, I will say, first of all, that conciliation is *conciliation* and not *compulsion*. Mr. Krishna Pillai has certainly appreciated that point and he said openly that some compulsion should be applied in order that conciliation may be made successful and effective. I think, Sir, conciliation can never be *compulsion*. Conciliation must be *conciliation* always, whatever penalties we may impose for not agreeing to the conciliation. Whatever adjustment the conciliation may consist of, that adjustment should not be binding as such on any person unless he agrees to it, even though we may impose some penalty for not agreeing to it. But I am emphatically of opinion that no arrangement as such shall be binding on the debtor or creditor unless he agrees to it. To say that it should will be the very negation of conciliation. It is not quite a question of advantage to the debtor. It is really a question of what is just. If it is merely a question of advantage, probably, the best thing will be to cut down all the debts by, say, 50 per cent. This House, I think, is not concerned with finding out what is merely advantageous to the debtor, we must consider what is just. It seems to me, Sir, that, if it were a question of doing justice, no person should be compelled to give up any portion of his right, unless he agrees to it. A conciliation arrangement proposed by a Board should not be pushed down the throat of any person, even though we may add some penalty as proposed in the Bill for his not agreeing to the conciliation. Sir, it must also be mentioned that this sort of compulsion which is sought to be put on conciliation will have a very bad moral effect on the general public. When we enact legislation, it should be made to appear that we are considering every aspect of the matter. This House is a responsible body and it should endeavour to do *justice* to every one. Here we have got the debtor on the one hand and the creditor on the other. Our legislation should not purport merely to be for purpose of giving advantage

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to the debtor or the creditor. We may have to do many things for justice, but I think that to compel a person to accept a conciliation arrangement may not be doing justice to one party or other. Again it will be noticed that there is no mutuality between the debtor and creditor as regards this compulsion. The debtor may not agree to the conciliation even if 50 per cent. of the creditors agree to the conciliation. Will the conciliation be binding on the debtor under this amendment? No. At least there must be a corresponding obligaton on the debtor too. The amendment is that, if the creditor or 50 per cent. of the creditors agree, the conciliation shall be binding. Why not the debtor also be bound if, say, 60 per cent. of the creditors are prepared to accept the conciliation? That shows that the real object at the back of the amendment is not to do justice between one party and another but merely to give an advantage to the debtor. That is a very undesirable attitude to be taken in this legislation.

MR. K. R. ELENKATH (*Kalkulam I*): The Bill contemplates that interest from 1105 also should be considered by the Conciliation Board. May I ask whether that is doing justice to the debtor or giving advantage to him?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is doing justice. Perhaps opinions may differ; but a large majority of the 23 members who constituted the Select Committee thought that it will be but doing justice.

I must repeat once again the distinction that I wish to draw. What is sought by this amendment is to compel creditors to accept a conciliation and make it operative as such. It is not merely a question of penalty such as a forfeiture of costs or interest, which moreover is left to the discretion of a court. This amendment proposes to push down the throat of a person an arrangement which he does not want. That is compulsion pure and simple.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): All these amendments have got the same object; and that object is to see that, if a person happens to be indebted, he must be helped some way or other. I really wonder whether the question of rural credit has been considered at all. None of these amendments consider that question. My point is this. Holding as I do that the whole scheme of Debt Conciliation is quite unnecessary and uncalled for in a country like Travancore, I am further of opinion that the amendments, if passed, would make the position of the agriculturist creditors as well as debtors still worse.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I also rise to oppose these amendments on the following grounds. The consent of creditors owing 60 per cent. of the debts or 60 per cent. of the creditors agreeing to conciliation would have been acceptable to me if all these debts and all creditors were on the same footing. Here we are dealing with secured and unsecured debts and even secured debts without any consideration of priority. And so there is a very great chance——

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MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): May I know from the member how priority is not recognised here?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): My friend was saying it is a mistake but I am wondering how he used that expression. The amendment says that 60 per cent. of creditors owing 60 per cent. of the debt can apply.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): May I know whether the amendment also recognises that, in the agreement arrived at by the Conciliation Officer or the agreement drawn up by the Conciliation Officer, he will take into consideration priority of debts and various other things?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): The Conciliation Officer is not bound to go into that question. He is given very wide discretion. He has jurisdiction to consider certain points mentioned in Clause 13.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Why should my friend conclude that the Conciliation Officer will not consider the question of priority?

DEPUTY PRESIDENT: The reasons need not be asked.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Is there anything in the Bill compelling the Board to consider that particular question mentioned by the member?

DEPUTY PRESIDENT: That is nothing but cross-examination. The Bill is before the House, and every Honourable Member has studied it carefully. So, any cross-examination is unnecessary. Mr. Asan makes responsible statements. We may take them for what they are worth.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): We have already seen that there are certain points which the Board may consider in conciliating. When the question of the percentage of creditors and the percentage of debts is being considered by the Board, it should also consider whether all the creditors are in the same position and all the debts are of the same character. There is no fairness in coming to a conclusion on the basis of the percentages alone. I therefore oppose the amendments.

The three amendments were put to vote and lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I beg to move the following amendment:

"*In Clause 16, delete sub-clause (2) and re-number sub-clause (3) as (2)*".

Clause 16 (1) provides as to what should be the procedure if the parties agree to the conciliation proposed by the award. In Clause 16 (2), a new set of persons, those who have not signed the conciliation agreement, are sought to be bound to accept the agreement. It says that if a creditor does not express to the Board his disagreement with the conciliation proposed, he may, if so ordered, be deemed to have

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agreed to the conciliation. He is constructively held to have agreed to the conciliation. Although, as a matter of fact, he might not have agreed, as matter of law, he is deemed to have agreed. Sir, my submission is that mere silence on the part of any party should not be deemed to amount to agreement ; because, after all, as the Law Member said, the whole thing should be a voluntary affair. If a person agrees, that is all right. If a person does not say that he agrees, leave him there. Do not compel him to write to you that he does not agree. In fact, what the Law Member has been saying all along is this :—"If you agree, all right : if you do not, you need not ; nobody compels you to agree." That is what he has been saying. Now, why should a person who does not agree be compelled to come to the Board, explain all his secrets only to say in the end that he does not agree? Why not leave alone the creditor who does not want it? Why should we suffocate him by compelling him to come and say that he does not agree? I do not find such a provision in any other legislative enactment. And it is quite unnecessary. We need not, I submit, go an inch further than the position we have taken in Clause 16 (1).

MR. T. S. JAYANTANAN NAMBOOTIRI (*Travancore Jenmies, North*) : I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Sir, it will be noticed that the party who does not agree to the conciliation proposed has merely to tell the Board that he does not agree. It is only if he keeps quiet over the matter that he is deemed to have agreed. The party who disagrees is given an opportunity to go and tell the Board that he does not agree. Sir, if a party does not even then go and tell the Board that he does not agree, it means one of two things; either he has utter contempt for the Board or he agrees to the conciliation given notice of. If it is the former, it should not be tolerated. If it is the latter, what is the objection to the clause? We should not have any sympathy for a man who has nothing but contempt for the Board. If he does not really agree, why not he go and say so?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I press the amendment, Sir.

The amendment was put to vote and lost.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*) : I demand a poll, Sir.

DEPUTY PRESIDENT : This is, certainly, not a way of gaining time.

A poll was taken and the House divided as follows :—

AYES—6.

1 Mr. K. P. Krishna Menon	4 Mr. R. Sambasiva Aiyar
2 " T. S. Jayantan Nambutiri	5 " K. C. Karunakaran
3 " S. Chattanatha Karayalar	6 " M. K. Janardana Kamath

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NOES—50.

1	Mr. K. C. Abraham	29	Mr. Pacode A. Narayana Pillai
2	,, V. T. Chacko	30	,, N. K. Krishna Pillai
3	,, M. Mahomed Haneef	31	,, A. Easwara Pillai (*Kallkulam II*)
4	,, S. J. Nair	32	,, A. Easwara Pillai (*Kottarakara*)
5	,, John Whiteley Tolson	33	,, R. Sivaraman Nair
6	,, K. R. Elenkath	34	,, Kainikkara M. Padmanabha Pillai
7	,, Antony George	35	,, Edavanatt S. Padmanabha Menon
8	,, J. M. Joseph	36	,, Pottayil S. Krishna Panickar
9	,, P. C. Kuriyan	37	,, M. K. Madhavan Pillai
10	,, N. John Joseph	38	,, V. K. Velappan Nair
11	,, T. C. Joseph	39	,, T. P. Velayudhan Pillai
12	,, T. T. Kesavan Sastri	40	,, G. Nilakantan
13	,, K. M. Krishnan	41	Rao Bahadur Dr. N. Kunjan Pillai
14	,, T. Krishna Pillai	42	Mr. T. C. Thomman
15	,, E. K. Kunjuraman	43	,, K. N. Kesava Pillai
16	,, P. C. Narayanan Bhattatiripad	44	,, C. V. Chandrasekharan
17	,, K. Mahomed	45	,, G. B E. Truscott
18	,, K. M. Kuriakose	46	,, Kayalam Paramesvaran Pillai
19	,, K. Madhavan	47	,, R. Pitchu Aiyangar
20	,, V. Ramakrishna Panikar	48	,, M. Govinda Pillai
21	,, P. K. Thomas	49	,, K. George
22	,, K. Padmanabhan	50	Vaidya Sastra Kusala Dr. Mrs. M. Poonen Lukose
23	,, Changanachery K. Paramesvaran Pillai		
24	,, S. Thiraviam Nadar		
25	,, N. E. Varughese		
26	,, K. Kunjukrishna Pillai		
27	,, Puthupalli S. Krishna Pillai		
28	,, A. S. Damodaran Asan		

NEUTRALS—4.

1	Mr. N. Abdur Rahiman Sahib	3	(Mr.) S. Nilakanta Pillai
2	Rao Sahib S. Paramesvara Aiyar	4	,, M. Sivatanu Pillai

MR. K. C. ABRAHAM (*Kottayam II*): Sir, I beg to move the following amendment.

"In Clause 16, sub-clause 2, delete the words "if so ordered by the board" in lines 8 and 9."

Sir, we are creating a machinery for conciliating debts. All that my amendment proposes is to accentuate the binding nature of the award of such machinery and to see that its decision will, to a certain extent, completely settle the question under dispute. It has now been accepted by us that, not only that the party who actually agrees to the conciliation, but also some other party or parties who do not actually sign the agreement, are to be bound by the conciliation order, by constructin. My submission is that such creditor, as does not appear in

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[Mr. K. C. Abraham.]

pursuance of a notice served under Section 7 or Section 8 or even special notice under Section 16 (2), does not deserve any consideration, especially in view of the argument advanced by the learned Law Member against the amendment we discussed last. Once we accept the proposition that a person, who either contumaciously or may be because he agrees, does not choose to appear before a board, need not be shown any consideration so as to enable him to drive a coach and pair into the agreemnet as it were, once we hold that the conciliation award is to be binding even on a party who keeps quiet and does not express his disagreement; my submission is that no discretion need be given to the Board itself for making its order binding or not binding on such party. According to the provision as it is, even the party who disagrees but does not express his disagreement, be it even due to contempt for the Board, may or may not be deemed to have agreed to the conciliation agreement, as the Board orders. It is left to the option of the Board. As it is, a creditor has only to keep away, be it even wantonly or out of contempt for the Board, and still not be bound by the conciliation, and may seek remedy elsewhere. Such a state of things is extremely undesirable. I therefore commend the amendment for the acceptance of the House.

MR. N. ABDUR RAHIMAN SAHIB (*Nominated*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose it, Sir. Under the provision in Clause 16 (2), any person who because of contempt for the board or because he really agrees to the conciliation, does not express his disagreement, is deemed to have agreed to and signed the conciliation agreement, even though he has not in fact signed it. I do not know what exactly Mr. Abraham wants by the amendment. Probably his point is that the word in the provision is 'may'. If that is so, the word 'may' should be altered into 'shall' and if there had been any amendment to that effect, I would have accepted that portion alone. But that is not the case now. His amendment is only to delete the words 'if so ordered by the Board', and I think, Sir, that I cannot agree to it. The Board may consider in any particular case that, having regard to the fact that they have not got sufficient materials, the absent parties should not be or need not be deemed to have signed the agreement. It should really be left to the Board to decide it. It is not necessary therefore to put in a compulsory provision that in *every* case where a person is absent he shall be deemed to have signed the agreement.

The amendment was put to the vote of the House and declared lost.

MR. K. C. ABRAHAM (*Kottayam II*): Sir, I move that :—

"In clause 16, delete the proviso to sub-clause (2)."

This amendment also follows in the same lines of arguments which I have expressed in regard to the previous amendment. The proviso reads :

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"Provided that if it is proved to the satisfaction of the Civil Court whenever the question arises before such court that the notice was not properly served on such person or if it is proved that though the notice was properly served on him he was prevented by sufficient cause, from not expressing his views to the Board, the agreement shall not have effect as if it were a decree so far as he is concerned."

It simply means that, even though an agreement has been come to between the debtor and the creditors appearing before the Board and even though in response to a special notice a creditor does not choose to appear before the Board and express his disagreement with the conciliation, and he is deemed constructively to have agreed, even in those circumstance when the matter comes before a court, it will be open to him who did not actually appear before the Board, but who was made constructively a party to the conciliation agreement, to contest that the order of conciliation should not bind him. That, I submit, is something which will go against the very grain of conciliation. I should like to see anything in the nature of a finality in this. People should not be allowed to flout the conciliation come to with the sanction of the Board. The conciliation board is a forum created for the purpose of settlement of debts by conciliation; and if there is nothing of finality attached to it, there is no use so far as the provision is concerned. The forum where the order is sought to be reviewed must be the same forum which has passed the order, and that, I submit, is in consonance with all principles of law.

MR. N. ABDUR RAHIMAN SAHIB (*Nominated*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment of Mr. Abraham. The amendment is to omit the proviso altogether. Upon that I would first of all say that there is no such finality as Mr. Abraham thinks even in regard to the orders of the highest court. Even in the High Court, it is open to a party to go to the High Court and say that either the notice was not served upon him or that he was prevented by sufficient cause from appearing before the court and that the decision against him must be reopened. That is one of the common rights of every person in whose absence a decision has been passed against him.

MR. K. C. ABRAHAM (*Kottayam II*): Is it not by way of appeal only ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Not necessarily. It may be by way of application to the very same court. If the High Court is convinced that a party was unable to appear for sufficient cause, then the High Court may review their own order.

MR. K. C ABRAHAM (*Kottayam II*): Then I understand that the application has to be made to the same court.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes. Here the amendment seeks to omit the Proviso. There may be many reasons for non-appearance. First of all, the notice might not have been properly served or it may be that some relation

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[Mr. Kayalam Paramesvaran Pillai].

of his was on his death-bed and he was prevented from coming or it may be that he himself was insane. In all such or similar cases, are we to impose these consequences as a matter of course? A chance must be given to every person to inform the proper authority that either the notice was not properly served or that he was prevented from appearing for just and sufficient cause.

MR. K. C. ABRAHAM (*Kottayam II*): Would not Section 25 be sufficient for the purpose, as it provides for applications to the same board for the purpose of reviewing its ruling?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That implies that the board will be in existence at the time that the application is sought to be put in. After the Board finished the conciliation work, the Board may not be functioning. Further, the question naturally arises only in a civil court, when the person may bring a suit on a debt due to him. Only then does the necessity for deciding the question arises.

The amendment was put to the vote of the House and declared lost.

DEPUTY PRESIDENT: The question now before the House is that Clause 16 do stand part of the Bill.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose it, Sir.

The question was put and the Clause was added to the Bill.

Clause 17.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I wish to make a personal statement.

DEPUTY PRESIDENT: You want to put a new point before the Chair?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Yes, Sir. I did not move amendment No. 148 before the ruling was given. The opportunity for me to move this amendment has come only now after the disposal of Clause 16. I move, Sir, for the permission of the Chair—

DEPUTY PRESIDENT: Do you mean to say that the ruling given by the Chair was given without jurisdiction? That is, do you mean to say that, at the time the President gave the ruling, he was not seized of this amendment and therefore the ruling was without jurisdiction?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Yes, Sir but I did not want to put it in so many words. I am to move this amendment only now and I pray that the Chair may rule that my amendment is in order because I am in a position to show that the amendment is in order according to the Rules and Standing Orders.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): I rise to a point of order.

DEPUTY PRESIDENT: Mr. Sambasiva Aiyar is now raising a point of order and an internecine point of order will be very inconvenient.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I pray that the Chair may give me permission to prove that I am within the Standing Orders in moving this amendment.

DEPUTY PRESIDENT: All those points that you propose to place before the Chair arise only when the Chair permits you to make those observations.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Is the honourable to be allowed to question a ruling on a point of order that was already given by the Chair?

MR. M. SIVATANU PILLAI (*Tovala*): If at all there was any ruling by the Dewan-President, it amounted only to a rejection of the amendment now before the House.

DEPUTY PRESIDENT: If it amounts to a rejection, to re-open it would be absolutely wrong. If it is a ruling, it may perhaps be considered again under a different set of circumstances. But so far as the particular amendment is concerned, that "*the State Land Mortgage Bank shall, subject to the rules governing the said Bank, pay to the creditor or creditors in cash the amount settled by the Board in any conciliation agreement as due to him or them, when the same does not exceed rupees three thousand*" "cannot be allowed to be moved for the word is 'shall,' and it creates a duty on the Government to do such and such a thing. The President observed yesterday that this is creating a charge on the revenue of the State. From what I understood Mr. Sivathanu Pillai to say, I think the President pronounced upon the inadmissibility of this amendment. If that was so, as I believe it is, the point cannot further be considered. Now we can go on to clause 17.

MR. T. KRISHNA PILLAI (*Neyyattinkara II*): Sir, I move the following:—

"*Delete Clause 17.*"

Sir, a certificate issued under Clause 17 is not binding on any one. It is quite innocuous. This would serve at best simply as an ornament to this Bill. Also I am afraid, Sir, that this will necessitate additional work for the conciliation officer who certainly will be obsessed with work even from the very start. So this is quite an unnecessary provision here; and hence I move that this Clause be deleted.

MR. K. P. KRISHNA MENON (*Perur*): I second it.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I support the amendment of Mr. T. Krishna Pillai. My submission is that, when the persons who have come to the Board for conciliation do not agree to the conciliation, the Board should not consider the point any further. It should become *functus officio*, once the parties do not agree. The whole principle embodied by the Clause that a certificate may be issued on failure of conciliation is wrong.

DEPUTY PRESIDENT: It can only be *functus officio* if this Section is not passed.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): My submission is that it should become *functus officio*. The Board should not function at all when the parties do not agree. It has jurisdiction over the subject matter only so long as the parties who seek adjudication before it agree to abide by the decision of the Board.

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[Mr. R. Sambasiva Aiyar.]

When once they do not agree, the Board should have no further jurisdiction. This is realy a most important Section in the Bill. I crave your permission to explain the implications of such a certificate. If this clause remains, all kinds of contractual obligations between the debtor and the creditor will be affected, properties vested in the creditors will be divested and the creditors will have to forego their amounts for no fault of their own. As I have submitted to the House already, the Board is not to be governed even by the Transfer of Property Act. I will give an instance. The first charge on a property is Government tax. The next is Jenmikaram, all that the Jenmies now get because of their loss of ownership.

DEPUTY PRESIDENT: I hope you will appreciate the fact that the House has been treated to these questions during the last four or five days.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I do not want to discuss the details. I wish only to refer to one very important point. The first charge on a property is the Government tax. The next is the Jenmikaram. The third charge, we will suppose, is a mortgage. We will take it that there is an agricultural loan as a fourth charge. The Conciliation Board has no power over the tax due to Government. Every pie has to be paid The Government will not submit to the jurisdiction of the Conciliation Board. Then there are the 2nd and 3rd charges. Their rights are now made subsequent to the fourth charge, namely, the agricultural loan. So far as the mortgagee is concerned, he advanced hard cash taking into consideration various factors so that he may get the money he advanced. But is there any gurantee that he will get the money? The Law Member would say that the Board will look into the position of the debtor. We have been treated, Sir, to this reply. He will say "you lose only the interest, and that is after all not much". What are the matters that should be considered in issuing a certificate? Is the Board bound by any rules as in the case of a Civil Court? There is absolutely no provision for any such thing. In the absence of any such thing, the Board has no right to exist. In that view, I support Mr. Krishna Pillai's amendment to delete the whole clause.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment. The provisions of Clauses 17 and 19 go together. These provisions are really intended to give a sanction to the Board's decisions. We have already passed a provision that the conciliation proposed by a Board will not be allowed to operate unless the agreement is signed by the parties. To leave it there would result in nobody respecting the authority of the Board. The proposals in Clauses 17 and 19 are intended to give some sort of sanction to a Board's decision. It will be seen from Section 17 that, if a party does not agree to the adjustment proposed by the Board, the Board may issue a certificate. If a certificate is issued, the courts may consider the certificate and disallow costs or interest in any suit for a debt. The word used is "may". The court is not bound to disallow costs or interest. Mr. Sambasiva Aiyar's argument was that the Board's function is conciliation and that they should not be allowed do anything else,

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I agree, generally. As the clauses now stand, the Board need not do anything other than what is necessary for arriving at conciliation. They are not also bound to record a certificate. What the clause intends is that the Board may record a certificate or the Board may not. But it will be recognised that the Board will become cognisant of various particulars in the course of their examination of a case with a view to conciliation, and therefore the Board may be in a position to say what is the best arrangement for the settlement of the case. If the Board is thus apprised of all the facts of the case, the Board will record a certificate. If however the Board has not got all the facts, it may refuse to record a certificate and ordinarily it will refuse. Thus, the Board may either record a certificate or refuse to record a certificate. The object of the clause is not that the Board should in every case make an enquiry for the mere purpose of recording a certificate.

The next objection seems to be that some sort of penal consequence should be provided for in every case. The consequence can arise only if a suit is brought for a debt covered by the certificate. That is a good arrangement too.

The amendment was put to vote and lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Sir, I move:

"*In Clause 17, delete sub-clause* (2) *and re-number sub-clause* (3) *as* (2)."

DEPUTY PRESIDENT : Have you not referred to the same subject while speaking on Mr. Krishna Pillai's amendment ?

MR. R SAMBASIVA AIYAR (*Kunnatnad II*) : I was then opposing the whole clause. Now I am only speaking on a particular principle embodied in this sub-clause. Sub-clause (2) runs as follows :—

> "The Board may record a like certificate even as regards parties who have not appeared before the Board or not taken part in the enquiry before the Board, if the Board is satisfied that it can come to a reasonable conclusion as to what will be a fair settlement in the case of such parties also".

As regards parties who have appeared, put in their claims, and argued their cases, a certificate may be recorded. The Board will be siezed of jurisdiction as regards those persons who have put in their claims. But as regards persons who have not appeared before the Board, how can it be invested with jurisdiction to issue a certificate ? The general principle of this sub-clause, namely, that a certificate may also be isssued in such cases should be deprecated. Therefore I move my amendment.

MR. T. S. JAYANTAN NAMBUTIRI (*Travancore Jenmies, North*): I Second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Sir, I oppose the amendment. This sub-clause is really an explanation of the provision contained in sub-clause (1). This clause expressly says that the Board may or may not record a certificate in a particular case. The question raised by Mr. Sambasiva Aiyar is, why should the Board give a certificate in regard to a person that has not appeared. That would be a legitimate question if the party has not been given opportunity to appear before the Board. On the other hand, every person is given notice to appear before the Board. If, in spite of that, the party does not appear, why should sympathy be felt for him ? I oppose the amendment.

The amendment was then put to the vote and lost.

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DEPUTY PRESIDENT: The question is that Clause 17 do stand part of the Bill.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose the Clause.

The question that Clause 17 do stand part of the Bill was then put and carried and the clause added to the Bill.

ADJOURNMENT MOTION.

DEPUTY PRESIDENT: We will now proceed to the adjournment motion.

MR. S. J. NAIR (*Nedumangad*): Sir, in view of the supreme importance of the Bill under discussion and in view of the fact that the P. W. D. toll gates have been auctioned, I do not move my motion.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose, Sir.

DEPUTY PRESIDENT: I do not know how Mr. Sambasiva Aiyar can oppose, when the motion itself is not made. The motion was in an embryonic condition and it has not taken any shape.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): But the member withdrew it.

DEPUTY PRESIDENT: There is difference between motions 'withdrawn' and 'not moved'. The present motion has not been made. Mr. S. J. Nair has put it that this Bill is a very important one and that the matter which was the subject of the adjournment motion is no longer urgent. The motion for adjournment is an extraordinary remedy and Mr. S. J. Nair sought the permission of the House to move it. Anyway he does not make the motion. There the matter drops.

We will now proceed to the further consideration of the Bill.

Clause 18.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I beg to move the following amendment.

In Clause 18, line 4, add "together with interest thereon at six per cent. per annum from the date of the certificate" after the words "cash payment" and in line 5, substitute "to deposit the amount with interest as aforesaid" for "to make the deposit".

Such a provision existed in the original Bill and by oversight it has been left out. In Clause 17, it is stated that the Conciliation Officer will issue a certificate for the amount due to the creditor and that it shall be paid forthwith or deposited in court. The creditor who desires to take advantage of the certificate will naturally get a copy of the order and apply to the civil court for the money decreed in his favour The amount covered by the certificate will then be given to him that is what Clause 18 says. If the Conciliation Officer decides that a creditor is entitled to get Rs. 100 on a particular date, should not the creditor be allowed interest on the amount from that date? By oversight in the Select Committee, this provision was not put in the revised Bill.

DEPUTY PRESIDENT: You say that it was due to your own oversight.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I will say that the Select Committee did not consider this aspect of the matter.

When the creditor applies for the amount covered by the certificate the interest thereon from the date on which he was entitled to have it till the date of deposit in court must be paid to him. There is no reason why the creditor should lose the interest. I ask, why not grant the interest also for the money fixed according to the certificate, between the period of award and the period of deposit in court?

MR. T. S. JAYANTAN NAMPOOTIRI (*Travancore Jenmies, North*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I will formally oppose the amendment. I must concede that there is some reason behind the amendment proposed by Mr. Sambasiva Aiyar. I would however ask the House, at the same time to consider whether this is not a small matter. After all, the interest would never exceed that for a period of three months; at any rate it need not; because the deposit has to be made within a period of three months and it is open to the creditor to make the application immediately after the date of the certificate; if the creditor is vigilant enough he can go to the court at once and save his interest except that for three months. On the other hand, strictly speaking, it is correct to say that the deposit should carry interest from the date of the certificate to the date of the deposit.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Is not the creditor to express his consent for the money being deposited in court?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That is what it comes to, and yet the creditor is denied the interest till the date of deposit.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Will not the granting of interest be an incentive to the creditor to keep him back from accepting the amount?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If such an idea will operate by reason of the fact of granting the interest, then the amendment may be voted down; but if interest is denied, it may operate as a check to a creditor to accept the certificate. That also may be considered.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): I oppose the amendment. The question of granting interest for the amount mentioned in the certificate was considered in the Select Committee and it decided that no interest need be given.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I challenge that statement, Sir,

DEPUTY PRESIDENT: This House has no right to consider whether the Select Committee considered it or not. Such discussions are beside the point.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Because Mr. Sambasiva Iyer referred to what transpired in the Select Committee, I also, being a member of the committee, had to say what transpired in

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[Pottayil S. Krishna Panickar.]

the committee. This granting of interest to the creditor will be a strong reason for him to litigate his claims in a court of law even though his conduct may not be quite justifiable. The creditor does not stand to lose. On this ground, I oppose the amendment. The concession that the legislature intends to give by Section 17 will be very much reduced and negatived.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I know what the Select Committee means by the expression "if the debtor were prepared to pay forthwith in cash in full settlement of all the debts" appearing in Clause 17?

DEPUTY PRESIDENT: I cannot permit Mr. Panickar to interpret what the Select Committee meant by that. There is the Report.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I know what is the meaning the member attaches to that expression?

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Whenever the creditor shows his willingness.

The amendment was put to the vote of the House and lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I demand a poll.

A poll was taken and the House divided as follows:—

AYES - 8.

1 Mr. S. Chattanatha Karayalar
2 ,, K. C. Karunakaran
3 ,, K. P. Krishna Menon
4 ,, Rao Sahib S. Paramesvara Aiyar
5 Mr. Changanachery K. Paramesvaran Pillai
6 ,, R. Sambasiva Aiyar
7 ,, M. Sivatanu Pillai
8 ,, S. Thiraviam Nadar

NOES—35

1 Mr. V. T. Chacko
2 ,, A. S. Damodaran Asan
3 ,, K. R. Elenkath
4 ,, Antony George
5 ,, K. George
6 ,, M. Govinda Pillai
7 ,, M. Mahomed Haneef
8 ,, S. J. Nair
9 ,, N. John Joseph
10 ,, J. M. Joseph
11 ,, T. C. Joseph
12 ,, K. N. Kesava Pillay
13 ,, T. T. Kesavan Sastri
14 ,, K. M. Krishnan
15 ,, Pottayil S. Krishna Panickar
16 ,, N. K. Krishna Pillai
17 ,, Puthupalli S. Krishna Pillai
18 ,, T. Krishna Pillai
19 Rao Bahadur Dr. N. Kunjan Pillai
20 Mr. K. Kunjukrishna Pillai
21 ,, E. K. Kunjuraman
22 ,, K. M. Kuriakose
23 ,, P. C. Kurian
24 ,, M. K. Madhavan Pillai
25 ,, Pacode A. Narayana Pillai
26 ,, S. Nilakanta Pillai
27 ,, Kayalam Paramesvaran Pillai
28 ,, M. Govinda Pillai
29 ,, V. Ramakrishna Panickar
30 Vaidya Sastra Kusala Dr. Mrs. M. Poonen Lukose
31 Mr. S. Thiraviam Nadar
32 ,, P. K. Thomas
33 ,, T. C. Thommen
34 ,, John Whitely Tolson
35 ,, T. P. Velayudhan Pillai

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NEUTRALS—4.

1 Mr. N. Abdur Rahiman Sahib	3 Mr. P. C. Narayanan Bhattatiripad
2 ,, A. Easwara Pillai (Kalkulam II)	4 ,, K. Padmanabhan

MR. S. NILAKANTA PILLAI (*Chirayinkil II*): Sir, I beg to move the following amendment —

"*In Clause 18, substitute the words "from time to time" for the words "not exceeding.....the deposit" in lines 6 and 7.*

The Clause as amended will read thus:—

"Upon the certificate being filed, or a copy of it being produced, it shall be open to the creditor or any of the creditors to apply to the court to call upon the debtor to deposit in court the amount mentioned in the certificate as the fair amount for settlement by cash payment. Upon such application being made, the court shall order the debtor to make the deposit within such time as it may think reasonable from time to time."

Sir, the object of my amendment is this. According to this Bill, almost all reasonable facilities are given to the debtor. But when once the certificate has been awarded and if he is called upon to deposit the amount conciliated by the Board within three months from the date of the certificate, he may find it very difficult because he may not be able to raise the necessary amount at once. The depression is not lifted, and more or less we can say the depression has come to stay. If the debtor is not given sufficient and reasonable time to raise the money and deposit the amount, it is better not to give any opportunity at all. So, my submission is that the debtor should be allowed reasonable time. Whether a period is reasonable or not depends upon the merits of each case. In one case, it may be possible for a debtor to raise and deposit the amount within two months. In certain other cases, he will not be able to raise the amount in a period of three months. He may require some time more. So I think it is better to allow the discretion to vest in a court. The original Bill also contains the same expression.

"Upon the certificate being filed, or a copy of it being produced, it shall be open to the creditor or any of the creditors to apply to the court to call upon the debtor to deposit in court the amount mentioned in the certificate as the fair amount for settlement by cash payment. Upon such application being made, the court shall order the debtor to make the deposit within such time as it may think reasonable from time to time".

So the provision in the original Bill was also one similar to mine. Therefore I think it is proper to retain that expression so that it will give some discretion to the court to fix the period according to the merits of each case.

DEPUTY PRESIDENT: So you want the words in the original Bill to be restored?

MR. S. NILAKANTA PILLAI (*Chirayinkil II*): Yes.

MR. K. P. KRISHNA MENON (*Parur*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. The scheme of the Clause is this. When the Board records a certificate, it will say what is a fair amount

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[Mr. Kayalam Paramesvaran Pillai.]

to be paid to the creditor if it is to be paid forthwith. That certificate may or may not be accepted by the creditor. If he does not accept the certificate, he will not take action under Clause 19. If he accepts the certificate, he will make an application to the court; and if the amount is deposited within three months, then it will be in full discharge of the entire debt. The amount that the debtor is asked to pay forthwith is taken to be the reasonable amount having regard to the time when the application is being made and when the certificate was recorded. It is provided that, if the creditor puts in an application, the debtor may deposit that amount without any interest and the deposit so made will be considered to be in full discharge of the amount due to the creditor. Of course, the creditor is not bound to make this application. The object of the framers of this clause is that, as far as possible, we must give an inducement to the creditor to go and make the application because of the inducement of immediate payment. To make it an inducement to the creditor, he should be given the assurance of payment within the minimum time possible. The maximum time proposed by the clause is three months. If the House wants that the creditor should not be given such inducement of speedy payment, then this amendment may be accepted.

MR. S. NILAKANTA PILLAI (*Chirayinkil II*): What I say is that the discretion should be left to the court.

The amendment was put to the vote and lost.

The question that Clause 18 do stand part of the Bill was then put and carried.

The Clause was added to the Bill.

Clause 19.

MR. P. C. KURIYAN (*Kottayam I*): Sir, I beg to move the following amendment: –

In Clause 19, substitute the following in lines 3 to 10:

"such court shall disallow in whole the cost of the suit or the application as the case may be, and shall also reduce the amount of the interest remaining due for the period from and after 1st Chingam 1105 up to the date of the decree or order on the application, as the case may be, reducing the rate of interest to four per cent. per annum."

The Clause as amended will read thus:—

"If in respect of any debt covered by the certificate of the Board, the creditor institutes a suit or makes an application (not being an application under Section 18) such court shall disallow in whole the cost of the suit or the application as the case may be, and shall also reduce the amount of the interest remaining due for the period from and after 1st Chingam 1105 up to the date of the decree or order on the application, as the case may be, reducing the rate of interest to four per cent per annum."

I wish to draw the attention of this House that, unless a provision similar to this is passed, all our labours will be like the mountain in labour producing but one mouse. In spite of all the argument of the Law Member, I must confess I was not able to follow him for, in one breath he will say conciliation will be compulsory and in another breath he will say that there should be some sort of compulsion.

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DEPUTY PRESIDENT: Did he really say that?

MR. P. C. KURIYAN (*Kottayam I*): So many times.

DEPUTY PRESIDENT: He said there should be a compromise between conciliation and compulsion.

MR. P. C. KURIYAN (*Kottayam I*): I am one who believes that, without at least some indirect compulsion, no creditor is voluntarily going to give up one pie due to him. The whole trouble, as far as I have understood, necessitating such a legislation like this, has arisen on account of the economic depression which does not enable a debtor to pay interest agreed upon during this period of depression. But for this fact, there would not have been the necessity for such a Bill like this. That is to say, if the debtors were really able to pay interest agreed upon which may be 12 per cent. nobody will come forward with a Bill like this. The agriculturist has not been in a position to pay interest during the last 5 or 6 years and only if he is given some relief for the accumulated debt he would get relief. And if we are going to give relief, we must give relief ere long. After the Board has come to a decision, the creditor says that he has not agreed; and if the matter is then allowed to go to a court, all the proceedings, the certificate and other things, will be adjudicated upon by the court; and the court will allow the whole or part or 4 per cent. interest. In that case, I fear, there will not be an end of the matter. Once the matter goes to the Civil Court, there is the right of appeal and second appeal. By the creation of the Boards we have admitted that the present courts are not able to administer justice upon the indebtedness of agriculturists. We are therefore constituting a special system of law to be administered through these Boards on whose decision no appeal lies. So with all our labours and the large amount Government have spent upon this we are not able to pass this Bill; it would not even justify the issue of the Proclamation by His Highness the Maharaja. We must not waste any more time in administering relief. I am not going to deny anything to the creditor. But if he is not going to abide by the decision of the Board, he must know that, if he goes to the Civil Court, he is not going to get more than 4 per cent. for debts from 1105.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If the interest that is provided in the contract is 3 per cent. will it not happen that the creditor gets more than the stipulated interest under this amendment?

MR. P. C. KURIYAN (*Kottayam I*): It might. But I do not think it will.

MR. K. R. ELENKATH (*Kalkulam I*): Even under the Clause as it is, will not creditor be able to get 4 per cent. or one-half of the stipulated rate whichever is higher?

MR. P. C. KURIYAN (*Kottayam I*): There are inconsistencies in the amendment as proposed by the Select Committee. There is the provision that they may reduce the interest to 4 per cent. or to one-half of that stipulated rate whichever is higher.

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DEPUTY PRESIDENT: Is that an inconsistency? There is nothing inconsistent in saying whichever is higher.

MR. P. C. KURIYAN (*Kottayam I*): Supposing the agreed rate is 3 per cent. Half will be 1½ per cent. But according to the Bill, whichever is higher means 4 per cent.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): If it is 3 per cent. could it not be reduced to 4 per cent?

MR. P. C. KURIYAN (*Kottayam I*): No. It ought to be either reduced it to 4 per cent. or to half the original rate.

DEPUTY PRESIDENT: Anybody seconding?

MR. K. M. KURIAKOSE (*Muvattupuzha II*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. Perhaps, the most plausible criticism that may be levelled against the provisions of the Bill is that, even though conciliation is purely voluntary, the Board may award a certificate with the result that if, subsequently, the creditor institutes a suit in respect of the debt, the court may disallow cost of the suit or reduce the interest due from 1105. The reply to this criticism is that it is always left to the discretion of the court. The court looks into the matter, considers all aspects of the question and says whether the costs will have to be forefeited or interest reduced. If Mr. Kuriyan's amendment is accepted, that makes it obligatory on the part of the court to make the party forfeit his costs and interest in every case. I think that that will be too drastic a provision. If it is left to the discretion of the court, the court will exercise it properly. It is wrong to make it compulsory on the court.

DEPUTY PRESIDENT: Do you press the motion?

MR. P. C. KURIYAN (*Kottayam I*): I press it.

The motion was put to vote and lost.

MR. S. J. NAIR (*Nedumangad*): I beg to submit to the Chair that Amendments Nos. 169 and 176 standing in my name go together.

DEPUTY PRESIDENT: You want these to be combined?

MR. S. J. NAIR (*Nedumangad*): Yes, Sir.

DEPUTY PRESIDENT: Combine them and please read it to the House?

MR. S. J. NAIR (*Nedumangad*): Sir, my first amendment is:—

"In Clause 19. line 7, for the words "for the period from and after 1st Chingom 1105 up to" substitute the word "on".

The second is:—

"In Clause 19, lines 8 to 10, for the words "any rate ——— is higher "occurring after " interest to" substitute "4 per cent. per annum".

When these two motions are accepted, Clause 19 would read as follows:—

"If in respect of any debt covered by the certificate of the board, the creditor institutes a suit or makes an application (not being an application under Section 18 (in any civil court, such court having regard to the certificate and the conduct of the parties in connection therewith may, in its discretion, disallow in whole or in part the costs of the suit or of the application, as the case may be and may also in its discretion reduce the amount of the interest remaining due on the rate of the decree or order on the application, as the case may be by reducing the rate of interest to 4 per cent. per annum."

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Sir, as the Clause now stands, it would appear that the rate of interest which a court may allow is 4 per cent. but the court is at perfect liberty to stipulate a higher rate or 4 per cent. whichever is higher.

DEPUTY PRESIDENT : How can the court stipulate ? The Court can direct.

MR. S. J. NAIR (*Nedumangad*) : So I submit that no such discretionary power should be given to the court against the interest of the debtor. If the interest of the debtor is to be safe-guarded, my idea is that the court cannot direct any interest higher than 4 per cent. and the court's discretion must be only up to 4 per cent.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : May I request Mr. S. J. Nair to explain the effect of his amendments ?

MR. S. J. NAIR (*Nedumangad*) : If a party, against the certificate of the Conciliation Board, rushes to the court of law for remedy he must as a penalty be compelled to forfeit not only interest for the period from 1105 but also for the whole amount due to the creditor under the conciliation certificate.

DEPUTY PRESIDENT : Anybody seconding ?

Nobody seconded.

DEPUTY PRESIDENT : So the amendment falls to the ground.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Sir, I move the following amendment :—

In Clause 19, add "if the debtor deposits, on or before the date of the first hearing of the suit or the application, as the case may be, the amount fixed in the certificate as the amount for settlement by cash payment together with interest thereon at six per cent. per annum from the date of the certificate to the date of the deposit" after the words "in its discretion" in line 4.

I would submit, Sir, the reason for the amendment. In Clause 19 the court is given powers to disallow costs and interest if the certificate of the Board is not accepted by the creditor. But, will the debtor at least accept the certificate ? The object of my amendment is to see that the creditor is not penalised if the debtor is recalcitrant and does not deposit in court at least the amount covered by the certificate. That is, if the debtor deposits in court the amount mentioned in the certificate, then the creditor may be penalised. But where the debtor himself has not accepted the certificate of the Board, *i. e.* does not deposit in cash the amount fixed by the Board, what is the remedy ? In that case I ask why should the creditor be penalised. If the certificate of the Board is to be binding on the creditor, I ask why should it not be binding on the debtor also ? And what is the certificate ? The certificate says that the debtor should pay to the creditor a certain amount in cash having regard to all the circumstances, in satisfaction of the debt.

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[Mr. R. Sambasiva Aiyar.]

I shall read Clause 18 :—

"Upon the certificate being filed or a copy of it being produced, it shall be open to the creditor or any of the creditors to apply to the court to call upon the debtorto deposit in court the amount mentioned in the certificate as the fair amount for settlement by cash payment. Upon such application being made, the court shall order the debtor to make the deposit within such time as it may think reasonable not exceeding in any case three months from the date of the order to make the deposit. The deposit so made in such time shall be deemed to be in full settlement of such claims of the creditor as are dealt with in the certificate.

Explanation :—The deposit so made shall not be liable to be proceeded against for the claims of any other person against the debtor."

All the above conditions have to be satisfied. It must be cash payment, immediately made, in full settlement. If a creditor sues in a court of law and does not care to apply, under Clause 18, for the deposit of the amount, he is sought to be penalised by Clause 19. If the debtor deposits in court the amount specified on or before the date of the first hearing, the court may be given the power to refuse the costs of the creditor. Sir, we all know the ordinary rule of law that, if the defendant, in a money suit, proves that he has made a valid and legal tender, of the amount due, before the date of suit and also deposits the amount before the date of the first hearing, the plaintiff will not be entitled to his costs and will also be liable to pay the costs of the defendant. Sir, I have no objection for the same principle being embodied in this Bill also.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Without knowing whether the creditor will be prepared to accept the conciliated amount or whether he would drag the debtor to a civil court, what is the incentive for the debtor to find out the amount mentioned in the certificate and to deposit it ?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : If it is merely a question of an incentive, he will not be liable for the costs. He need not pay the costs of the plaintiff.

Sir, I thought every honest man would pay back his debts. I do not think anybody would like to encourage a person who is unwilling to pay back his debts. Sir, in the cases contemplated by the amendment, the board has decided that the debtor is able to pay, and has also fixed the amount that he is to pay. They also direct that the amount must be paid in cash immediately in full settlement.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): But will the creditor accept the amount adjudged by the Board ?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : If he does not accept it is he that suffers. He loses his costs and interest ; and the debtor is thereby benefited.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If the creditor has no objection to accept the amount fixed by the Board, why not he make an application under Clause 18 ?

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I am now dealing with the question as to the circumstances under which alone the creditor can justifiably be mulcted of his costs. In deciding that, it is not merely the conduct of the creditor that we should consider, but also the conduct of the debtor. Let us take it that the conduct of the creditor is reprehensible. But, if the conduct of the debtor also is equally reprehensible, why should we allow him an unfair advantage over the creditor?

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): May I know from the member what his point is?

DEPUTY PRESIDENT: That certainly is not in order. Mr. Sambasiva Aiyar thinks that there is point in his argument; and, if there was no point in it, the Chair would not have allowed him to proceed.

MR. R. SAMBASIVA AIYAR ((*Kunnatnad II*): My humble submission, Sir, is that the creditor should not be mulcted of his costs if the debtor does not deposit in court at least the amount mentioned in the certificate.

MR. K P. KRISHNA MENON (*Parur*): I second the amendment.

MR. KAYALAM PARAMESVARAM PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment, Sir. First of all, there is no point in saying that the debtor must deposit the amount in court even though the creditor is not prepared to accept it in full settlement. If the creditor is really prepared to accept it, I cannot see what prevents him from making an application under Clause 18. So long as the creditor is not prepared to accept the amount in full settlement, what will happen if we compel the debtor to deposit the amount in court is this; the creditor will draw the amount from court and also proceed with his suit against the debtor, for the balance due. Sir, when we throw an obligation on one party, we must also throw a corresponding obligation on the opposite party. If the debtor is obliged to deposit the amount, the creditor also must be obliged to accept it in full settelment. So long as the creditor is not obliged to accept it, there is no justice in compelling the debtor alone to make the deposit.

Secondly, Mr. Sambasiva Aiyar argues that once we look into the conduct of the creditor, we must also look into the conduct of the debtor. Sir, the conduct of the debtor will surely be looked into by the court; and all that the creditor need do is to tell the court all about it.

I see no reason, Sir, why this amendment should be accepted.

The amendment was put to vote and lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I beg to move the following amendment:—

In Clause 19, substitute "reduce or disallow interest from the date of the certificate till the date of the decree or order on the application as the case may be" after the words 'in its discretion' in line 6.

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[Mr. R. Sambasiva Aiyar.]

The punishment prescribed for a creditor who does not accept the certificate is that the court may, in its discretion, disallow costs or reduce interest. But the provision in the Bill says that such reduction of interest is to operate retrospectively. The Board can reduce the interest remaining due, for the period from and after the 1st of Chingom 1105 up to the date of the order reducing the rate of interest. My amendment is based on the authority of the Law Member himself; because, in the Bill as he introduced it, the provision was the same as is contained in my present amendment.

DEPUTY PRESIDENT: That is only provisional authority. It has suffered in the light of the opinion of the Select Committee.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): It was the Select Committee that changed the provision in the original Bill and made it retrospective.

If the Law Member's original provision is only provisional authority, Sir, I shall quote a more definite authority, namely, similar legislative enactments in the Punjab, in the C. P., in the U. P., and in Madras. In all these places, the punishment prescribed for a creditor who does not accept the certificate is that interest is not allowed from the date of the certificate to the date of the decree or order. I presume that the Law Member, when he drafted this Bill, had these legislative enactments in his mind.

Sir, retrospective legislation is certainly not commendable except in extraordinary circumstances like war, and even then compensation is usually paid. It cannot be said that there is any such situation here now. After all, there is nothing but some kind of agitation set up by certain disgruntled planters. To me, it seems that there is nothing to justify the importance that the Government have given to this agitation. Government seem to have got frightened by it.

DEPUTY PRESIDENT: Although I do not want to interrupt Mr. Sambasiva Aiyar, I feel bound to say that, whatever may have been the attitude of Government when the Law Member introduced this Bill, there is the undeniable fact that a strong Select Committee of 23 members, most of whom were non-officials not under the pay of Government, has been responsible for the form in which the measure is now before the House. Therefore, the statement made that Government were frightened by an agitation does not serve any purpose.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I only mentioned it casually, Sir. My real point is that the present situation does not at all warrant retrospective legislation. Under similar conditions, in various British Indian Provinces, they have only provided that, as a punishment for not accepting the certificate, the creditor should lose interest only from the date of the certificate till the date of decree or order. I am aware, Sir, that in those enactments, it is also provided that, if the debtor deposits the amount in court, the court shall disallow the costs of the the plaintiff. My previous amendment, relating to that matter has been thrown out by this House; and therefore I do not propose to dilate upon that point now.

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Since the provision in the Bill, as it is, amounts to retrospective legislation, I request the House to accept my present amendment.

MR. K. P. KRISHNA MENON (*Parur*) : I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I oppose the amendment. At the same time, I would mention that it is an important point to which I would invite the particular attention of the House. It is no doubt true that in other enactments, as pointed out by Mr. Sambasiva Aiyar, the penalising relates only to interest that may accrue from the date of the certificate to the date of the decree. And, as observed by Mr. Sambasiva Aiyar, that was my original proposal too. The Select Committee decided to enlarge it a bit or perhaps substantially and on a consideration of it, I have decided to accept it. The real defect in the proposal that the party need suffer only interest from the date of the certificate to the date of the decree is this. Practically, it may amount to no suffering at all, because the creditor has only to institute a suit forthwith and if he is also vigilant in regard to getting a decree at once, all the interest that he may have to lose will be the interest for some, say, three months if he could get a decree by that time. That, the committee evidently considered, was too light a penalty to impose on a person for disregarding the decision of the Board.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Does the Law member think that the condition of the agriculturists in Travancore is much worse than that of the agriculturists in the neighbouring British Indian Districts ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : The point is not exactly that the conditions are different here from what they are in British India. The real question for consideration will be whether when a board thinks it desirable to record a certificate because the board, though it is not bound to record it, thinks that it has ample material before it, should we not give sufficient respect to that certificate ? But are we showing a sufficient respect to it if we simply provide for reduction of interest from the date of the certificate ? That may mean nothing in actual fact. If you want to give respect to the certificate of the board, there must be some substantial penalty. That is why it is provided in the Bill as revised that he should suffer interest from the 1st Chingom 1105 till the date of the decree.

Another reason why the year 1105 was put in is that it is from 1105 that the prices of commodities went down. The wherewithal with which the debtor should pay the interest went down in price from that year. That is one reason why the creditor may be asked to be satisfied, for some good reason, with reduced interest from that year. But above all these things, the material consideration is that there must be some substantial suffering inflicted on the creditor if he is not prepared to accept the certificate, and, that object will not be achieved if one makes the section apply to interest arising only from the date of the certificate. I therefore oppose the amendment.

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[Mr. Kayalam Paramesvaran Pillai.]

The amendment was put to the vote of the House and declared lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I beg to move—

In Clause 19 add "and interest from the date of the certificate till the date of the decree or order on the application as the case may be, and if the debtor deposits on or before the date of the first hearing of the suit, or the application, as the case may be, the said amount for payment to the credior together with the interest thereon at six per cent. per annum from the date of the certificate to the date of the deposit, the court shall disallow all costs of the suit or the application as the case may be, and any other interest from the date of the certificate till the date of decree or order on the application as case may be" after the words 'as the case may be' in line 6.

DEPUTY PRESIDENT : I presume that the reasons advanced by Mr. Sambasiva Aiyar when the previous amendment was moved will in a very great measure be available to this also.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I promise that I shall not repeat them. I shall mention only such of those as strike me as new.

Here, Sir, in some respect it may be considered that I have gone even in advance of the Select Committee report. Sir, here I have provided a set of circumstances in which the creditor shall be disallowed costs and shall be disallowed interest for a certain period. After all, the Select Committee gives the discretion to the court in each case. But I have gone even much farther than what is contained in the Select Committee report and have provided for a contingency in which the creditor *shall b* deprived costs and *shall be* deprived of interest. That contingency, Sir, is this:—

> "If the debtor deposits on or before the date of the first hearing of the suit, or the application as the case may be, the said amount for payment to the creditor together with interest thereon at six per cent. per annum from the date of the certificate to the date of the deposits, the court shall disallow all costs of the suit, or application as the case may be, and any other interest from the date of the certificate till the date of the decree or order on the application as the case may be".

This, Sir, I may say is practically word for word, the expression that is used in the original Bill. Only I have added the words 'or the application as the case may be'. Those words were omitted in the original Bill but were added by the Select Committee. But these are practically the words of the mover of the original Bill. I submit, Sir, even this would be better because there is a hope that the creditor can see the colour of his cash. Therefore, I recommend, Sir, this amendment to the acceptance of the House.

MR. K. P. KRISHNA MENON (*Parur*): I second it.

MR. KAYALAN PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment for the chief reason that this amendment again touches only the interest due from the date of the certificate to the date of the decree which, as I explained on a previous

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occasion, may not after all mean much. Secondly, I would say that this is really a consequential amendment to some other amendment which has perhaps been thrown out, because it refers to—'the *said* amount. So far as I can see, this cannot refer to any of the provisions that have been accepted by the House till now. Hence it can only mean that it refers to an amendment that has been thrown out. Therefore, this also must be thrown out.

The amendment was put to the vote of the House and declared lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I demand a poll. It is not for every amendment of mine that I am asking for a poll.

DEPUTY PRESIDENT: I do recognise that, if a member entertains any doubt as to the number of votes, he may demand a poll. But in a matter like this, especially when the difference is so great and when the difference on similar questions in this House today was equally pronounced, no poll was demanded and taken, unless you insist on having it, I am inclined not to allow one.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I withdraw my request.

MR. K. PADMANABHAN (*Chirayinkil I*): Sir I move:

In Clause 19, line 6, delete the words "the amount of" : and in line 8, delete the words "by reducing the rate of the interest".

Sir, the latter part of this clause is not quite happily worded. I mean to say that it is a little verbose. The portion reads—

> "the amount of the interest remaining due for the period from and after 1st Chingom 1105 up to the date of the decree or order on the application, as the case may be.....".

Sir, the idea sought to be conveyed is to give a discretion to the civil courts to reduce the rate of interest from a particular period. If my amendment is accepted, the clause will read thus—

> "reduce the interest remaining due for the period from and after 1st Chingom 1105 up to the date of the decree or order on the application as the case may be, to any rate.....".

So, my amendment would give a happier wording to the clause and also at the same time would make it less verbose. So, I believe this amendment will be accepted by the House.

MR. K. R. ELENKATH (*Kalkulam I*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): Sir, I oppose it, I would only say that 23 members in the Select Committee have supported this wording.

The amendment was put to the vote of the House and declared lost.

MR. K. PADMANABHAN (*Chirayinkil I*): I demand a poll.

DEPUTY PRESIDENT: You are very particular in having it?

MR. K. PADMANABHAN (*Chirayinkil I*): Yes, Sir.

A poll was accordingly taken with the following result:—

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AYES—3.

1 Mr. K. R. Elenkath.
2 ,, S. Nilakanta Pillai
3. Mr. K. Padmanabhan

NOES—44.

1 Mr. N. Abdur Rahiman Sahib
2 ,, V. T. Chacko
3 Rao Sahib S. Parameswara Aiyar
4 Mr. M. Mahomed Haneef
5 ,, S. J. Nair
6 ,, A. Thanu Pillai
7 ,, John Whitely Tolson
8 ,, Antony George
9 ,, J. M. Joseph
10 ,, P. C. Kuriyan
11 ,, N. John Joseph
12 ,, T. C. Joseph
13 ,, T. T. Kesavan Sastri
14 ,, K. M. Krishnan
15 ,, T. Krishna Pillai
16 ,, E. K. Kunjuraman
17 ,, K. Mahomed
18 ,, K. M. Kuriakose
19 ,, K. Madhavan
20 ,, V. Ramakrishna Panickar
21 ,, R. Raman Pillaai
22 ,, P.K. Thomas
23 ,, T. C. Thommen
24 ,, K. N. Kesava Pillai
25 ,, G. B. E. Truscott
26 Mr. Kayalam Parameswaran Pillai
27 ,, K. George
28 Rao Bahadur Dr. N. Kunjan Pillai.
29 Mr. M. Govinda Pillai
30 Dr, (Mrs.) M. Poonen Lukose
31 Mr. K. Kunjukrishna Pillai
32 ,, Puthupalli S. Krishna Pillai
33 ,, A. S. Damodaran Asan
34 ,, Pacode A. Narayana Pillai
35 ,, A. Easwara Pillai (*Kottarakara*)
36 ,, R. Sivaraman Nair
37 ,, Kainikkara M. Padmanabha Pillai
38 ,, Edavanatt S. Padmanabha Menon
39 ,, Pottayil S. Krishna Panickar
40 ,, M. K. Madhavan Pillai
41 ,, M. K. Janardhana Kammath
42 ,, V. K. Velappan Nair
43 ,, T. P. Velayudhan Pillai
44 ,, G. Nilakantan

NEUTRALS—9.

1 Mr. P. C. Narayanan Bhattatiripad
2 ,, K. P. Krishna Menon
3 ,, T. S. Jayantan Namputiri
4 ,, S. Chattanatha Karayalar
5 ,, K. C. Karunakaran
6 Mr. R. Sambasiva Aiyar
7 ,, S. Thiraviam Nadar
8 ,, N. E. Varghese
9 ,, A. Easwara Pillai (*Kalkulam II*)

The amendment was declared lost.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*) : Sir, I beg to move the following amendment ;—

In Clause 19, substitute the words " the maximum rate allowable being not higher than either one-half of the stipulated rate or four per cent. per annum whichever is lower" for the last two lines".

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The clause, as reported by the Select Committee, I fear, would mean that a loan which was contracted at an interest of 3 per cent. will require the debtor to pay 4 per cent. interest. I fear so, because the minimum interest allowed is 4 per cent.

DEPUTY PRESIDENT: According to you it is a question of words.

MR. R. RAMAN PILLAI (*Changanachery cum Peermade II*): Not only words. It must be—'whichever is less'. For that purpose, I move this amendment. I do not want to dilate upon this fact. If the Law Member thinks is worth while to consider it, let him accept it or let him reject it.

MR. S. J. NAIR (*Nedumangad*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I am afraid I cannot accept this amendment. I cannot quite follow the amendment. I believe that the meaning of the clause is not intended to be changed even under the amendment.

MR. S. J. NAIR (*Nedumangad*): Sir, I withdraw my seconding. I wanted to second only No. 177 and not 177 A.

DEPUTY PRESIDENT: When an Honourable Member of this House, present at the time of discussion, lends his support to a motion before the House, the presumption is that he knows distinctly what he is doing and appreciates what he does. I observed from the Chair in the hearing of all the members, for I speak sufficiently loud, that the motion under consideration was 177 A and not 177. Mr. Raman Pillai also said that. I think, therefore, that Mr. S. J. Nair could have been more discreet in giving his support. Anyhow, let us pass on. Do not repeat such mistakes. It will be putting this House in an awkard position. I, therefore take it that at the time that Mr. S. J. Nair lent his support he meant amendment No. 177 A, and nothing that he states now can be heeded to.

MR. S. J. NAIR (*Nedumangad*): A word of explanation, Sir, I distinctly heard the Law Member say that in clause 19 the last word "higher" should be "lower". From the nature of the information given to me I thought it was No. 177 and not No. 177 A.

DEPUTY PRESIDENT: Anyhow I consider that you seconded the amendment. The House is siezed of that. I refuse to reconsider that.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Does the amendment mean that, if a person stipulates for, say, 5 per cent. he should, according to the amendment, get only $2\frac{1}{2}$ per cent.

MR. R. RAMAN PILLAI (*Changanachery cum Peermade II*): Suppose the stipulated rate of interest is 4 per cent. Therefore according to the clause, half that interest will be 4 per cent. because it says "whichever is higher". Again suppose the stipulated rate of interest is 3 per cent; half of that according to my amendment will be only one and a half per cent. whereas according to the clause it will be four per cent.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): This amendment may not achieve it. I am however prepared to consider the point raised.

The amendment was by leave withdrawn.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, my amendment is as follows:

Add the following as proviso to Clause 19:

"Provided that the Court shall not disallow costs or reduce any portion of the interest in respect of any debt incurred after the 1st Chingom 1105 M. E.

Sir, I could not give notice of this in sufficient time because this amendment arose in view of certain amendments accepted by this House. My motion is to the effect that the discretion vested in the court to disallow costs or reduce interest should not be exercised in the case of those cases arising after 1105. In the case of debts after 1105, monies were advanced after the depression began. Therefore in those cases the court should not be given discretion to disallow costs or reduce interest.

DEPUTY PRESIDENT: I think your amendment is a belated one. Yesterday I heard the President observing that ordinarily no late amendments should be allowed; not that I am not prepared to consider any amendment on its own merits. But when Mr. Sambasiva Aiyar and others had notice of this direction given by the President, I cannot understand why they should put off giving notice of amendments till the eleventh hour.

MR. A. THANU PILLAI (*Trivandrum—Rural*): When there is no objection, cannot the President allow it?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I explain, Sir? I sent in this amendment in the light of certain motions that have been passed in this House. I request that I may be permitted to move this amendment.

DEPUTY PRESIDENT: Mr. R. Sambasiva Aiyar wants to move his amendment on the ground that it is necessary because the House has accepted certain propositions today. Mr. Thanu Pillai has enquired whether the Chair has got the power to refuse permission when there is no opposition to the amendment on the part of any member of the House. As at present advised, I say that the Chair has got the authority whether opposition is taken by any member or not. The point raised by Mr. Sambasiva Aiyar is an important one, and, as an exceptional case, I am prepared to allow him to put his point before the House in a very short speech.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*). I will take only a very short time. I only request that the House will be kindly pleased to direct its attention to Chapter VIII of the Report of the Debt Redemption Committee. The Committee drew a definite distinction between debts incurred prior to 1105 and those incurred after 1105. The debts incurred prior to 1105 belong to the pre-depression period and those incurred after 1105 to the post-depression period.

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Therefore we ought to make a distinction between a creditor who paid money when money was so cheap and the creditor who advanced money when it was so dear. Therefore my object is that a distinction should be maintained between these two class of debts.

MR. K. P. KRISHNA MENOM (*Parur*) : I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : No doubt, a distinction can be drawn between debts that arose after 1105 and those before 1105. But here the question is whether the creditor is prepared to accept the certificate recorded by the board and if not what is the penalty that shall be imposed for it. That penalty is made to relate to the interest from 1105 to date of the decree, and it is during this period that the return on monies advanced has gone down. Therefore I think that there is no hardship in reducing interest as proposed in the clause.

The motion was put to vote and lost.

Then the question that Clause 19 do stand part of the Bill was put to vote.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Sir, I have an amendment.

DEPUTY PRESIDENT : Mr. Sambasiva Aiyar has no right, for I got up and said that the question was that Clause 19 do form part of the Bill. Mr. Sambasiva Aiyar did not respond then.

The question that Clause 19 do stand part of the Bill was then put to vote and carried and the clause added to the Bill.

Clause 20.

DEPUTY PRESIDENT : The question is that Clause 20 do stand part Bill .

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I had given notice of an amendment.

DEPUTY PRESIDENT : When, please.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : During the course of the day. I shall explain. If the Chair thinks it material, my amendment can be moved. All that I have to say is that I may be permitted to move it and have my say. Whether it is carried or not is no concern of mine.

DEPUTY PSESIDENT : The difficulty will be that if at this stage the amendments are admitted without a principle, that will be setting a premium on others so that, in effect, the President's direction will be whittled down.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : A word of explanation, Sir.

DEPUTY PRESIDENT : In this case also it is after I got up and said, "now the question is that Clause 20 do stand part of the Bill" that Mr. Sambasiva Aiyar rose up. Therefore I regret I cannot allow that.

The question that Clause 20 do stand part of the Bill was then put to vote.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : I oppose.

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The question that Clause 20 do stand part of the Bill was put and carried and the Clause was added to the Bill.

Clause 21.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I move the following amendment:—

In Clause 21, line 2, substitute the words "from any person in respect of the same debtor" for "from the same person"

A debtor may have various creditors. Any creditor can file an application for conciliation of debts according to the Clause already passed. First time when the application is sent up, an enquiry will be made. Another creditor will again put up an application for conciliation. That too will be enquired into. A third creditor can repeat the same matter So much so, each creditor has got a right of putting in applications. A lot of expenditure is involved. At no time is a final conclusion possible. Further, the object really aimed at by the Clause will be frustrated. Hence I suggest this amendment.

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): I accept the amendment. Conciliation is always in regard to a debtor. By means of the conciliation, the assets and liabilities of one debtor are adjusted. Such being the case, when a conciliation has been made once, another creditor should not reopen it in respect of the same debtor. Such a provision would be a wholesome rule; and if the House is agreeable, I am prepared to accept the amendment.

The amendment was then put to vote and carried.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): There is a consequential amendment. I move that in line 2 for the words "a second" substitute the word "an".

MR K. GEORGE (*Land Revenue and Income Tax Commissioner*): I second it.

The amendment was then put to vote and carried.

DEPUTY PRESIDENT: Now the question is that Clause 21 as amended do stand part of the Bill.

The motion was put and carried and the clause as amended was added to the Bill.

Clause 22.

MR. K. PADMANABHAN (*Chirayinkil I*): I move the following:

In Clause 22, Provisio, line 1, substitute "whenever" for "wherever" and in line 2, substitute "whenever" for the word "wherever"

The expression "wherever" in Clause 22, does not convey any sense. We are not concerned with any place at all. It is already

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granted that the question may arise either before a court or board. Then we are concerned with time. Therefore "whenever" is to be substituted.

In this, I am also supported by a precedent. In Clause 16, sub-clause (2) Proviso, the expression used is "whenever". This is only a verbal alteration; but all the same it means much. The Law Member, who is very anxious to defend the prestige of the Select Committee, I hope, will not raise any objection to this.

DEPUTY PRESIDENT: Up to this, you are right. The latter part of your argument does not arise.

MR. K. PADMANABHAN (*Chirayinkil I*): But, Sir, I anticipate objection from the Law Member.

DEPUTY PRESIDENT: You are quite in form up to that. Why should you anticipate difficulties?

MR. K. PADMANABHAN (*Chirayinkil I*): From my experience I have to anticipate possible objections from the Law Member. So I request the members of the House, including the Law Member, to accept my suggestion.

MR. S. J. NAIR (*Nedumangad*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): "Wherever" means in whichever cases. It is not a question of place and time. "Wherever" is readily understood.

MR. K. PADMANABHAN (*Chirayinkil I*): Then, how did that expression "whenever" arise in Clause 16, Proviso to sub-clause (2).

DEPUTY PRESIDENT: In statutes such language occurs.

MR. K. PADMANABHAN (*Chirayinkil I*): Does not that expression denote, where the matter comes to be settled?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): No.

The amendment was then put to vote and lost.

MR. K. PADMANABHAN (*Chirayinkil I*): I demand a poll; simply because this is a simple –

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): On a point of order. When a poll is demanded, can the member say his reasons?

DEPUTY PRESIDENT: No. What I said some time ago will apply to this case as well. There are only 2 or 3 people who voted for Mr. Padmanabhan. If there is something in the margin, I can understand a poll being asked.

MR. K. PADMANABHAN (*Chirayinkil I*): May I explain, Sir.

DEPUTY PRESIDENT: I would request Mr. Padmanabhan to reconsider the matter. The only question is this. If Mr. Padmanabhan, notwithstanding the appeal that I made to him from the Chair, is not agreeable to drop it, I am prepared to allow a poll.

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MR. K. PADMANABHAN (*Chirayinkil I*): It is just because I—

DEPUTY PRESIDENT: I want an answer 'yes' or 'no'

MR. K. PADMANABHAN (*Chirayinkil I*): I definitely want a poll, Sir.

A poll was taken with the following result:—

AYES—2.

1 Mr. S. J. Nair	2 Mr. K. Padmanabhan

NOES—47.

1 Mr. N. Abdur Rahiman Sahib	27 Mr. T. C. Thommen
2 ,, V. T. Chacko	28 ,, K. N. Kesava Pillai
3 Rao Sahib S. Parameswara Aiyar	29 ,, G. B. E. Truscott
4 Mr. M. Mahomed Haneef	30 ,, Kayalam Parameswaran Pillai
5 ,, P. C. Narayana Bhattathiripad	31 ,, K. George
6 ,, A. Thanu Pillai	32 Rao Bahadur Dr. N. Kunjan Pillai
7 ,, S. Chattanatha Karayalar	33 ,, M. Govinda Pillai
8 ,, John Whitely Tolson	34 Vaidyasastra Kusala Dr. (Mrs.) M. Poonen Lukose
9 ,, K. C. Karunakaran	35 Mr. K. Kunjukrishna Pillai
10 ,, A. Easwara Pillai (Kalkulam II)	36 ,, Puthupally S. Krishna Pillai
11 ,, Antony George	37 ,, A. S. Damodaran Asan
12 ,, J. M. Joseph	38 ,, Pacode A. Narayana Pillai
13 ,, P. C. Kuriyan	39 ,, A. Easwara Pillai (Kottarakara)
14 ,, N. John Joseph	40 ,, R. Sivaraman Nair
15 ,, T. C. Joseph	41 ,, Kainikkara M. Padmanabha Pillai
16 ,, T. T. Kesavan Sastri	42 ,, Edavanatt S. Padmanabha Menon
17 ,, K. M. Krishnan	43 ,, Pottayil S. Krishna Panickar
18 ,, T. Krishna Pillai	44 ,, M. K. Madhavan Pillai
19 ,, E. K. Kunjuraman	45 ,, N. E. Varghese
20 ,, K. Mahomed	46 ,, V. K. Velappan Nair
21 ,, K. M. Kuriakose	47 ,, T. P. Velayudhan Pillai
22 ,, K. Madhavan	
23 ,, V. Ramakrishna Panickar	
24 ,, R. Raman Pillai	
25 ,, K. P. Thomas	
26 ,, P. K. Thomas	

NEUTRALS—2.

1 Mr. K. P. Krishna Menon	2 Mr. R. Sambasiva Aiyar

MR. R. SAMBASIVA AIYAR (*Kunnainad II*): I request that I may be allowed to move a new amendment. The amendment is that "*Clause 2 : may be omitted*".

DEPUTY PRESIDENT: That is a clause which comprises some of the ideas already decided by the House, so that the deletion of the whole Clause will be out of order because the House has committed itself to certain opinions on some of the matters. So the amendment for the omission of the Clause will be out of order.

The question that Clause 22 stand part of the Bill was then put.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose it.

The motion was passed and the Clause was added to the Bill.

Clause 23.

MR. K. PADMANABHAN (*Chirayinkil I*): I move the following amendment:—

In Clause 23, line 1, delete the words "or application for revision". and add the following Provisio :—

"Provided, however, that nothing in this Section will affect the revisional jurisdiction of the High Court to call for the records of any proceeding before a Conciliation Officer for the purpose of satisfying itself as to the legality of any agreement proposed or certificate recorded or order passed by such officer and as to the regularity of any proceeding before him and pass such order in the matter as the High Court thinks fit."

By this proviso I intend to confer a revisional jurisdiction on the High Court over the proceedings of the Conciliation Boards. By this legislation we are going to establish a novel body throughout the State having jurisdiction over the civil rights of this country. As to what sort of officers we are going to appoint, this House has no definite knowledge. That quasi-judicial body has to decide questions of facts as well as questions of law. According to the provisions contained in this Bill, the Board *may* decide or *may not* decide. It *may* take evidence or it *may not* take evidence. Even if it takes evidence, what law it is that it has to follow is not known. We are in the dark in regard to all those matters. Under such circumstances, it is reasonable that the highest judicial tribunal in the land should be invested with powers to revise proceedings of this Board. Otherwise, serious hardship and inconvenience may arise. With these observations, I commend the amendment to the acceptance of the House.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Should the High Court have jurisdiction to call for records on their own accord?

MR. K. PADMANABHAN (*Chirayinkil I*): Naturally just as in other cases; the High Court should revise the proceedings of the Conciliation Board on the motion of the parties or of their own accord.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I second this amendment. Even in small cause cases, the High Court has jurisdiction. If a Munsiff decides a small cause case, the High Court can interfere in revision with the judgement. But the jurisdiction of the conciliation board is unlimitted What I submit is that, in cases decided by conciliation boards, it should have revisionary jurisdiction. It is easy to say that after all the penalty that the creditor has to face is only very small. I submit that it is not small.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Has the High Court any power to revise the decrees passed by the Registrar or the arbitrators appointed by him in cases in which they award twice the principal and even 18 per cent. interest for the future?

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I do not think the High Court is able to do it. But there are other remedies. In all other cases a person who is aggrieved has a remedy. But here alone he has no remedy. It is wrong to say that the suffering is small. It is not small. It is a very heavy suffering for the creditor. If the High Court is vested with revisionary jurisdiction, that will be an effective check on the vagaries of the Conciliation Officer.

MR. N. ABDUR RAHIMAN SAHIB (*Nominated*): Will it not cause further delay?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Oh no. There will be no greater delay than now. But, on the other hand, if the High Court has a revisional jurisdiction over the conciliation board, the Conciliation Officer will try to see that things are expedited, and the High Court can advise the Conciliation Board as its subordinate court. Therefore I submit that it will be much better if the Section is amended as proposed by Mr. Padmanabhan.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar vakil*): I oppose the motion. I would point out that there is no necessity at all under the provisions of this Bill for giving any power of revision to the High Court. First of all just consider what it is that the Board can do. The Board suggests an arrangement, the conciliation and that will be binding on the parties only if all of them agree. If they do not agree, what is the consequence? The Board will then give a certificate. And upon that, civil court which tries the case may order that the creditor shall suffer his cost or should give up a portion of the interest. Against such order of the court, there is a regular appeal to the District Court or the High Court. Whatever be the board's proceedings, they will ultimately go before a court, unless the parties agree to the proceedings and there will be an appeal also. So long as that appeal is available to the parties, there is no necessity for giving a power of revision to the High Court.

The second aspect is that the Board should function expeditiously. It should not be hampered by an appeal or revision at every stage. It may be that its decision goes wrong. But it should be allowed to function expeditiously. It should not be sought to be corrected from time to time. It is unnecessary and it will lead to delays.

The amendment was put to the vote of the House and lost.

The question that Clause 23 do form part of the Bill was then put

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I oppose.

The motin was passed and the Clause was added to the Bill.

DEPUTY PRESIDENT: Before we proceed to the next business, I wish to point out this because a demand for poll was made from time to time even under circumstances under which the Chair did not think it absoluteiy necessary to allow it. Rule 62 on page 25 of the Manual says —

> "Votes may be taken by voice or division and shall be taken by division if any member so desires. The President shall determine the method of taking votes by division."

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Mark the words "The President shall determine the method".

In the Indian Legislative Assembly also, there have been occasions like this.

"The President declared "the Ayes have it" and, there being cries of "No", said: "The volume of sound for "Ayes" is so preponderating that I do not think a division is necessary."

Whereupon a member said that, under Standing Order 30 (2) even a single member was entitled to call for a division.

"The President observed: 'It is perfectly open to the President, if he is satisfied on the shout that there is a clear preponderance of opinion on one side and that the division is asked for frivolously and merely for purposes of delay, to refuse the demand for Division".

There are a number of cases like that. I do not want to characterise the attempt of any member of this House as frivolous. But I am obliged to point out that, when the results are certain, when the difference between one side and the other is so preponderating there is not much good gained by demanding a poll. I shall not take up the time of the House any more. But I may also refer to the practice of Parliament.

Divisions unnecessarily claimed :—

"It is in the power of the members, when a question is put from the chair, to compel the House to take a division thereupon; and experience proved the necessity of placing this power under some restraint. By the standing order of the 27th November, 1882, power was given to the chair, under certain restrictions, to take the vote of the House upon dilatory motions, such as a motion to adjourn a debate, by calling upon the members who challenged the decision of the chair, to rise up in their places. This standing order was repealed during the session of 1888. A standing order passed in that year and amended in 1919 provides that the Speaker or the chairman, if in his opinion a division is unnecessarily claimed, may take the vote of the House or committee by calling upon the members who support, and who challenge his decision, to rise successively in their places; and he, thereupon, as he may think fit, either declare the determination of the house or the committee, or name tellers for a division."

There is a latitude that way. We need not go far ahead in these matters, and I would appeal to the good sense of the members that, in cases where the votes are pronounced one or the other way, a demand for a poll may not be made.

The House will now adjourn and meet again at 11 A. M. tomorrow.

The House adjourned at 5-32 P. M.

K. MADHAVA KURUP,
Secretary to the Sri Mulam Assembly.

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